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COMMISSIONERS

TITLES 42-43

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## PUBLISHER'S NOTE

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Amendments to laws and new laws enacted since the publication of the bound volume down to and including the 2013 regular session are compiled in this supplement and will be found under their appropriate section numbers.

This publication contains annotations taken from decisions of the Idaho Supreme Court and the Court of Appeals and the appropriate federal courts. These cases will be printed in the following reports:

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Title and chapter analyses, in these supplements, carry only laws that have been amended or new laws. Old sections that have nothing but annotations are not included in the analyses.

Following is an explanation of the abbreviations of the Court Rules used throughout the Idaho Code.

I.R.C.P.	Idaho Rules of Civil Procedure
I.R.E.	Idaho Rules of Evidence
I.C.R.	Idaho Criminal Rules
M.C.R.	Misdemeanor Criminal Rules
I.I.R.	Idaho Infraction Rules
I.J.R.	Idaho Juvenile Rules
I.C.A.R.	Idaho Court Administrative Rules
I.A.R.	Idaho Appellate Rules

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## USER'S GUIDE

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To assist the legal profession and the layperson in obtaining the maximum benefit from the Idaho Code, a User's Guide has been included in the first, bound volume of this set.



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## **ADJOURNMENT DATES OF SESSIONS OF LEGISLATURE**

Year	Adjournment Date
2004 .....	March 20, 2004
2005 .....	April 6, 2005
2006 .....	April 11, 2006
2006 (E.S.) .....	August 25, 2006
2007 .....	March 30, 2007
2008 .....	April 2, 2008
2009 .....	May 8, 2009
2010 .....	March 29, 2010
2011 .....	April 7, 2011
2012 .....	March 29, 2012
2013 .....	April 4, 2013



## TITLE 42

# IRRIGATION AND DRAINAGE — WATER RIGHTS AND RECLAMATION

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1. APPROPRIATION OF WATER — GENERAL PROVISIONS, §§ 42-108B, 42-110.
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42. GROUND WATER RECHARGE, §§ 42-4201A, 42-4223.
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## CHAPTER 1

### APPROPRIATION OF WATER — GENERAL PROVISIONS

#### SECTION.

42-108B. Leasing of water under established rights — Notice — Appeal.

#### SECTION.

42-110. Right to divert water.

### 42-101. Nature of property in water.

**Cited in:** Joyce Livestock Co. v. United States (In re SRBA Case No. 39576), 144 Idaho 1, 156 P.3d 502 (2007).

#### ANALYSIS

Contracts for water rights.

Local regulation.

Nature of water right.

#### Contracts for Water Rights.

Entity that applies the water to beneficial use has a right that is more than a contractual right. United States v. Pioneer Irrigation Dist. (In re SRBA Case No. 3957), 144 Idaho 106, 157 P.3d 600 (2007).

#### Local Regulation.

Where a dairymen's association and a cattle association filed a complaint challenging the constitutionality of Gooding County, Idaho, Ordinance No. 90, which regulated water quality at confined animal feeding operations (CAFOs), the supreme court held that Ordinance 90 did not violate Idaho Const., art. XII, § 2. While this section provided that control over the appropriation of water was vested in the state, regulation of water quality by local government was not preempted; because of Idaho's diverse geographical setting, water regulation at CAFOs does not call for a uniform regulatory scheme. Idaho Dairy-

men's Ass'n v. Gooding County, 148 Idaho 653, 227 P.3d 907 (2010).

### **Nature of Water Right.**

Where the United States bureau of reclamation (BOR) filed water right claims against irrigation entities regarding projects developed pursuant to the Reclamation Act of 1902, any rights held by BOR were subject to rights of the beneficial users that were served by the irrigation districts because, inter alia, (1) federal law deferred to state law in determining

the rights to water in the reclamation projects, (2) the beneficial users had an interest that was stronger than mere contractual expectancy, and (3) title to the use of the water was held by the consumers or users of the water. *United States v. Pioneer Irrigation Dist.* (In re SRBA Case No. 3957), 144 Idaho 106, 157 P.3d 600 (2007).

**Idaho Law Review.** Why Does Idaho's Water Law Regime Provide for Forfeiture of Water Rights?, Peter R. Anderson and Aaron J. Kraft. 48 Idaho L. Rev. 419 (2012).

## **42-103. Right acquired by appropriation.**

### **ANALYSIS**

Constitutional use water right.  
Vesting of rights.

### **Constitutional Use Water Right.**

Trial court properly determined that United States had not asserted its water rights under the constitutional method of appropriation because, under that method the United States, as the claimant, was required to put the water to beneficial use, which it had failed to do. On the other hand, a livestock company had established its rights to the instream water because the company's predecessors, by watering their stock, had put the water to beneficial use. *Joyce Livestock Co. v.*

*United States* (In re SRBA Case No. 39576), 144 Idaho 1, 156 P.3d 502, cert. denied, 552 U.S. 990, 128 S. Ct. 487, 169 L. Ed. 2d 339 (2007).

### **Vesting of Rights.**

A water right does not vest until the statutory procedures for obtaining a license are completed, including the issuance of the license. *Idaho Power Co. v. Idaho Dep't of Water Res.* (In re Licensed Water Right No. 03-7018), 151 Idaho 266, 255 P.3d 1152 (2011).

**Idaho Law Review.** Why Does Idaho's Water Law Regime Provide for Forfeiture of Water Rights?, Peter R. Anderson and Aaron J. Kraft. 48 Idaho L. Rev. 419 (2012).

## **42-104. Appropriation must be for beneficial purpose.**

### **Beneficial Use.**

Where the United States bureau of reclamation (BOR) filed water right claims against irrigation entities regarding projects developed pursuant to the Reclamation Act of 1902, any rights held by BOR were subject to rights of the beneficial users that were served by the irrigation districts because, inter alia, (1) federal law deferred to state law in determining the rights to water in the reclamation projects, (2) the beneficial users had an interest

that was stronger than mere contractual expectancy, and (3) title to the use of the water was held by the consumers or users of the water. *United States v. Pioneer Irrigation Dist.* (In re SRBA Case No. 3957), 144 Idaho 106, 157 P.3d 600 (2007).

**Idaho Law Review.** Why Does Idaho's Water Law Regime Provide for Forfeiture of Water Rights?, Peter R. Anderson and Aaron J. Kraft. 48 Idaho L. Rev. 419 (2012).

## **42-106. Priority.**

**Idaho Law Review.** The Elusive Implied Water Right for Fish: Do Off-Reservation Instream Water Rights Exist to Support In-

dian Treaty Fishing Rights, Comment. 48 Idaho L. Rev. 515 (2012).

## **42-108. Change in point of diversion, place of use, period of use, or nature of use — Application of act.**

### **Change in Nature of Use.**

City could not change to municipal purposes a water right licensed for irrigation purposes without an administrative transfer

proceeding under this section. *City of Pocatello v. State* (In re SRBA Case No. 39576), 152 Idaho 830, 275 P.3d 845 (2012).



**42-108B. Leasing of water under established rights — Notice — Appeal.** — Any person, entitled to the use of water whether represented by a license issued by the department of water resources, or by decree of the court, who shall desire to lease the water pursuant to section 42-108A, Idaho Code, shall make application to the department of water resources. Such application shall be upon forms furnished by the department and shall describe the right licensed, claimed or decreed which is to be leased. Upon receipt of said application, an application filing fee of thirty dollars (\$30.00) and a publication fee of fifty dollars (\$50.00), it shall be the duty of the director of the department of water resources to examine same and if otherwise proper, to cause notice of the proposed leasing of water and setting forth the hearing date at which protests will be heard, to be published once a week for two (2) consecutive weeks in a newspaper published and of general circulation within the county where the water is diverted, if there is such a paper, otherwise in a newspaper of general circulation within the county. Such notice shall advise that anyone who desires to protest the proposed leasing of water and who has a superior right to use the water and who may suffer pecuniary loss shall file notice of protest with the department within five (5) days of the last date of publication. The hearing date set by the director of the department of water resources shall be held not sooner than ten (10) nor later than fifteen (15) days after the last date of publication. Upon receipt of any protest, it shall be the duty of the director of the department of water resources to investigate the same and to conduct a hearing thereon. He shall also advise the watermaster of the district in which such water is used of the proposed lease.

The director of the department of water resources shall examine all of the evidence and available information and, provided no other water rights senior or junior to the water to be leased are injured thereby, may reject and refuse approval for, or may partially approve for less quantity of water, or may approve upon conditions any proposed lease of water where the proposed use is such that it will reduce the quantity of water available under other existing water rights, the water supply involved is insufficient for the purpose for which it is sought, the lease would cause the use of water to be enlarged beyond that authorized under the water right to be leased, the lease would be contrary to any local rental pool procedure as authorized under section 42-1765, Idaho Code, the lease will conflict with the local public interest as defined in section 42-202B, Idaho Code, or the lease will adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates, in the case where the place of use is outside of the watershed or local area where the source of water originates. A copy of the approved application for leasing of water shall be returned to the applicant, and he shall be authorized upon receipt thereof to lease the water pursuant to section 42-108A, Idaho Code. In the event the director of the department of water resources determines that a proposed change shall not be approved as provided in this section, he shall deny same and forward a notice of such action to the applicant by certified mail, which decision shall be subject to review pursuant to section 42-1701A, Idaho Code.

All fees received by the department of water resources under the provisions of this section shall be submitted to the state treasurer for deposit in the water administration fund.

#### History.

I.C., § 42-108B, as added by 1981, ch. 267, § 2, p. 566; am. 2011, ch. 243, § 1, p. 655.

**Compiler's Notes.** The 2011 amendment, by ch. 243, in the first sentence in the second paragraph, deleted "shall approve, in whole or in part, or upon conditions" following "avail-

able information and" and added the language beginning "may reject and refuse approval for, or may partially approve for less quantity of water" through to the end of the sentence.

Section 2 of S.L. 2011, ch. 243 declared an emergency. Approved April 7, 2011.

**42-110. Right to divert water.** — The proprietors of any ditch, canal or conduit, or other works for the diversion and carriage of water, whose right relative to the quantity of water they shall be entitled to divert by means of such works shall have been established by any valid claim, permit, license or decree of court, shall be entitled to such quantity measured at the point of diversion, subject, however, to all prior rights. Water diverted from its source pursuant to a water right is the property of the appropriator while it is lawfully diverted, captured, conveyed, used, or otherwise physically controlled by the appropriator.

#### History.

1899, p. 380, § 32; reen. R.C. & C.L., § 3249; C.S., § 5565; I.C.A., § 41-110; am. 2004, ch. 191, § 1, p. 601.

**Compiler's Notes.** Section 2 of S.L. 2004, ch 191 is compiled as § 42-3802.

Section 4 of S.L. 2004, ch. 191 declared an emergency. Approved March 23, 2004.

## CHAPTER 2

### APPROPRIATION OF WATER — PERMITS, CERTIFICATES, AND LICENSES — SURVEY

#### SECTION.

42-201. Water rights acquired under chapter — Illegal diversion and application of water — Uses for which water right not required — Exclusive authority of department.

42-202. Application to appropriate water — Contents — Filing fees — Disposition of fees — Record of receipts.

42-202B. Definitions.

42-203A. Notice upon receipt of application — Protest — Hearing and findings — Appeals.

42-203B. Authority to subordinate rights — Nature of subordinated water right and authority to establish a subordination condition — Authority to limit term of permit or license.

42-204. Examination — Permit — Commencement of work — Extensions — Appeal.

#### SECTION.

42-218a. Lapse of application for failure to request extension or submit proof of application to beneficial use — Notice of lapsing.

42-219. Issuance of license — Priority.

42-221. Fees of department.

42-222. Change in point of diversion, place of use, period of use, or nature of use of water under established rights — Forfeiture and extension — Appeals.

42-223. Exceptions or defenses to forfeiture.

42-233. Low temperature geothermal resource.

42-234. Ground water recharge — Authority of department to grant permits and licenses.

42-248. Notification of change in ownership of a water right or change of address of a water right owner — Notice of action affecting a water right.



**42-201. Water rights acquired under chapter — Illegal diversion and application of water — Uses for which water right not required — Exclusive authority of department.**

(1) All rights to divert and use the waters of this state for beneficial purposes shall hereafter be acquired and confirmed under the provisions of this chapter and not otherwise. And after the passage of this title all the waters of this state shall be controlled and administered in the manner herein provided. Such appropriation shall be perfected only by means of the application, permit and license procedure as provided in this title; provided, however, that in the event an appropriation has been commenced by diversion and application to beneficial use prior to the effective date of this act it may be perfected under such method of appropriation.

(2) No person shall use the public waters of the state of Idaho except in accordance with the laws of the state of Idaho. No person shall divert any water from a natural watercourse or apply water to land without having obtained a valid water right to do so, or apply it to purposes for which no valid water right exists.

(3) Notwithstanding the provisions of subsection (2) of this section, water may be diverted from a natural watercourse and used at any time, with or without a water right:

(a) To extinguish an existing fire on private or public lands, structures, or equipment, or to prevent an existing fire from spreading to private or public lands, structures, or equipment endangered by an existing fire;

(b) For forest practices as defined in section 38-1303(1), Idaho Code, and forest dust abatement. Such forest practices and forest dust abatement use is limited to two-tenths (0.2) acre-feet per day from a single watercourse.

(4) For purposes of subsection (3)(b) of this section, no person shall divert water from a canal or other irrigation facility while the water is lawfully diverted, captured, conveyed, used or otherwise physically controlled by the appropriator.

(5) If water is to be diverted from a natural watercourse within a water district, or from a natural watercourse from which an irrigation delivery entity diverts water, a person diverting water pursuant to subsection (3)(b) of this section shall give notice to the watermaster of the intent to divert water for the purposes set forth in said subsection. In the event that the water to be diverted pursuant to subsection (3)(b) of this section is not within a water district, but an irrigation delivery entity diverts water from the same natural watercourse, the required notices shall be given to said irrigation delivery entity. For uses authorized in subsection (3)(a) of this section, notice shall not be required but may be provided when it is reasonable to do so.

(6) A water right holder, who determines that a use set forth in subsection (3) of this section is causing a water right to which the holder is entitled to be deprived of water to which it may be otherwise entitled, may petition the director of the department of water resources to order cessation of or modification of the use to prevent injury to a water right. Upon such a petition, the director shall cause an investigation to be made and may hold

hearings or gather information in some other manner. In the event that the director finds that an injury is occurring to a water right, he may require the use to cease or be modified to ensure that no injury to other water rights occurs. A water right holder feeling aggrieved by a decision or action of the director shall be entitled to contest the action of the director pursuant to section 42-1701A(3), Idaho Code.

(7) This title delegates to the department of water resources exclusive authority over the appropriation of the public surface and ground waters of the state. No other agency, department, county, city, municipal corporation or other instrumentality or political subdivision of the state shall enact any rule or ordinance or take any other action to prohibit, restrict or regulate the appropriation of the public surface or ground waters of the state, and any such action shall be null and void.

(8) Notwithstanding the provisions of subsection (2) of this section, a municipality or municipal provider as defined in section 42-202B, Idaho Code, a sewer district as defined in section 42-3202, Idaho Code, or a regional public entity operating a publicly owned treatment works shall not be required to obtain a water right for the collection, treatment, storage or disposal of effluent from a publicly owned treatment works or other system for the collection of sewage or stormwater where such collection, treatment, storage or disposal, including land application, is employed in response to state or federal regulatory requirements. If land application is to take place on lands not identified as a place of use for an existing irrigation water right, the municipal provider or sewer district shall provide the department of water resources with notice describing the location of the land application, or any change therein, prior to land application taking place. The notice shall be upon forms furnished by the department of water resources and shall provide all required information.

#### **History.**

1903, p. 223, § 41; am. R.C. & C.L., § 3252; C.S., § 5568; I.C.A., § 41-201; am. 1971, ch. 177, § 2, p. 843; am. 1986, ch. 313, § 2, p. 763; am. 2000, ch. 291, § 1, p. 1007; am. 2006, ch. 256, § 1, p. 793; am. 2008, ch. 320, § 1, p. 887; am. 2012, ch. 218, § 1, p. 596.

**Compiler's Notes.** The 2006 amendment, by ch. 256, added subsection (4).

The 2008 amendment, by ch. 320, rewrote the section catchline, which formerly read: "Water rights acquired under chapter-Illegal application of water"; subdivided subsection (3) into an introductory paragraph and paragraph (a), and in the introductory paragraph, inserted "diverted from a natural watercourse and"; added paragraph (3)(b) and subsections (4) through (6), and redesignated former subsection (4) as subsection (7).

The 2012 amendment by ch. 218, added subsection (8).

#### **ANALYSIS**

Federal law.

Methods of appropriation.

#### **Federal Law.**

Where the United States bureau of reclamation (BOR) filed water right claims against irrigation entities regarding projects developed pursuant to the Reclamation Act of 1902, any rights held by BOR were subject to rights of the beneficial users that were served by the irrigation districts because, *inter alia*, (1) federal law deferred to state law in determining the rights to water in the reclamation projects, (2) the beneficial users had an interest that was stronger than mere contractual expectancy, and (3) title to the use of the water was held by the consumers or users of the water. *United States v. Pioneer Irrigation Dist.* (In re SRBA Case No. 3957), 144 Idaho 106, 157 P.3d 600 (2007).

#### **Methods of Appropriation.**

Trial court properly determined that United States had not asserted its water rights under the constitutional method of appropriation because, under that method, the United States, as the claimant, was required to put the water to beneficial use, which it had failed to do. On the other hand, a



livestock company had established its water rights because the company's predecessors had put the water to beneficial use by watering their stock. *Joyce Livestock Co. v. United States* (In re SRBA Case No. 39576), 144 Idaho 1, 156 P.3d 502, cert. denied, 552 U.S. 990, 128 S. Ct. 487, 169 L. Ed. 2d 339 (2007).

**Opinions of Attorney General.** Because the legislature has authorized both the counties and the state to regulate confined animal feeding operations (CAFOs), and because

these authorities overlap, it is unlikely that a court would conclude the state has completely occupied the field of CAFO regulation or that state law provides an exclusive regulatory program that preempts all local regulation. OAG 08-01.

**Idaho Law Review.** *Why Does Idaho's Water Law Regime Provide for Forfeiture of Water Rights?*, Peter R. Anderson and Aaron J. Kraft. 48 Idaho L. Rev. 419 (2012).

**42-202. Application to appropriate water — Contents — Filing fees — Disposition of fees — Record of receipts.** — (1) For the purpose of regulating the use of the public waters and of establishing by direct means the priority right to such use, any person, association or corporation hereafter intending to acquire the right to the beneficial use of the waters of any natural streams, springs or seepage waters, lakes or ground water, or other public waters in the state of Idaho, shall, before commencing of the construction, enlargement or extension of the ditch, canal, well, or other distributing works, or performing any work in connection with said construction or proposed appropriation or the diversion of any waters into a natural channel, make an application to the department of water resources for a permit to make such appropriation. Provided however, if the use of the diversion works or irrigation system is represented by shares of stock in a corporation or if such works or system is owned or managed by an irrigation district, no such application may be approved by the director of the department of water resources without the consent of such corporation or irrigation district. Such application must set forth:

- (a) The name and post-office address of the applicant.
  - (b) The source of the water supply.
  - (c) The nature of the proposed use or uses and the period of the year during which water is to be used for such use or uses.
  - (d) The location of the point of diversion and description of the proposed ditch, channel, well or other work and the amount of water to be diverted and used.
  - (e) The time required for the completion of construction of such works and application of the water to the proposed use.
- (2) An application proposing an appropriation of water by a municipal provider for reasonably anticipated future needs shall be accompanied by sufficient information and documentation to establish that the applicant qualifies as a municipal provider and that the reasonably anticipated future needs, the service area and the planning horizon are consistent with the definitions and requirements specified in this chapter. The service area need not be described by legal description nor by description of every intended use in detail, but the area must be described with sufficient information to identify the general location where the water under the water right is to be used and the types and quantity of uses that generally will be made.

(3) Whenever it is desired to appropriate and store flood or winterflow waters, the applicant shall specify in acre feet the quantity of such flood or winterflow waters which he intends to store, but for irrigation purposes he

shall not claim more than five (5) acre feet of stored water per acre of land to be irrigated, nor, in the event of the filing of an application claiming both normal flow and flood water and winterflow water, shall the total amount of water claimed exceed the equivalent of a continuous flow during the irrigation season of more than one (1) cubic foot per second for each fifty (50) acres of land to be irrigated, or more than five (5) acre feet of stored water for each acre of land to be irrigated.

(4) The application shall be accompanied by a plan and map of the proposed works for the diversion and application of the water to a beneficial use, showing the character, location and dimensions of the proposed reservoirs, dams, canals, ditches, pipelines, wells and all other works proposed to be used by them in the diversion of the water, and the area and location of the lands proposed to be irrigated, or location of place of other use.

(5) If the application involves more than twenty-five (25) cubic feet per second of water or the development of more than five hundred (500) theoretical horsepower, or impoundment of water in a reservoir with an active storage capacity in excess of ten thousand (10,000) acre feet, the applicant may be required by the director of the department of water resources to furnish a statement of the financial resources of the corporation, association, firm or person making the application, and the means by which the funds necessary to construct the proposed works are to be provided, and the estimated cost of construction; and if such application is made by a corporation, the amount of its capital stock, how much thereof has been actually paid in, and the names and places of residence of its directors; and if for the generation of power or any other purpose than irrigation or domestic use, the purpose for which it is proposed to be used, the nature, location, character, capacity and estimated cost of the works, and whether the water used is to be and will be returned to the stream, and if so, at what point on the stream.

(6) In case the proposed right of use is for agricultural purposes, the application shall give the legal subdivisions of the land proposed to be irrigated, with the total acreage to be reclaimed as near as may be; provided, that no one shall be authorized to divert for irrigation purposes more than one (1) cubic foot of water per second of the normal flow for each fifty (50) acres of land to be so irrigated, or more than five (5) acre feet of stored water per annum for each acre of land to be so irrigated, unless it can be shown to the satisfaction of the department of water resources that a greater amount is necessary. Provided further, that the plan of irrigation submitted shall provide for the distribution of water to within not more than one (1) mile of each legal subdivision of the land proposed to be reclaimed by the use of such water; provided also, that in the case of all ditches designed to have a capacity of ten (10) cubic feet per second or less, such map showing the location of such ditch, and the place of use of such water, or the location of the lands to be irrigated, may be upon blanks furnished by the department of water resources.

(7) No application shall be accepted and filed by the department of water resources until the applicant shall have deposited with the department a filing fee as in this chapter provided.



(8) All moneys received by the department of water resources under the provisions of this chapter shall be deposited with the state treasurer, and such sums as may be necessary shall be available for the payment of the expenses of the department of water resources incurred in carrying out the provisions of this chapter.

(9) Such expense shall be paid by the state controller in the manner provided by law, upon vouchers duly approved by the state board of examiners, for the work performed under the direction of the department of water resources. The department of water resources shall keep a record of all filing fees received in connection with applications for permits to appropriate public waters.

(10) Provided further, that rights initiated prior to the enactment of this amendment, so far as it pertains to flood and winterflow waters, shall not be affected thereby.

(11) Provided further, that water rights held by municipal providers prior to July 1, 1996, shall not be limited thereby.

#### **History.**

1903, p. 223, § 1; am. 1905, p. 357, § 1; reen. R.C., § 3253; am. 1913, ch. 37, § 1, p. 136; reen. C.L., § 3253; C.S., § 5569; am. 1929, ch. 281, § 1, p. 675; I.C.A., § 41-202; am. 1935, ch. 145, § 1, p. 353; am. 1967, ch. 374, § 1, p. 1079; am. 1973, ch. 184, § 1, p. 428; am. 1994, ch. 180, § 83, p. 420; am. 1996, ch. 297, § 1, p. 967; am. 2012, ch. 120, § 1, p. 335.

**Compiler's Notes.** The 2012 amendment, by ch. 120, added the second sentence in the introductory paragraph of subsection (1).

**Cross Reference.** Department of water resources, § 42-1701 et seq.

**Cited in:** Chisholm v. State Dep't of Water Res. (In re Transfer No. 5639), 142 Idaho 159, 125 P.3d 515 (2005).

#### **Vesting of Rights.**

A water right does not vest until the statutory procedures for obtaining a license are completed, including the issuance of the license. Idaho Power Co. v. Idaho Dep't of Water Res. (In re Licensed Water Right No. 03-7018), 151 Idaho 266, 255 P.3d 1152 (2011).

### **42-202B. Definitions.** — Whenever used in this title, the term:

(1) "Consumptive use" means that portion of the annual volume of water diverted under a water right that is transpired by growing vegetation, evaporated from soils, converted to nonrecoverable water vapor, incorporated into products, or otherwise does not return to the waters of the state. Consumptive use is not an element of a water right. Consumptive use does not include any water that falls as precipitation directly on the place of use. Precipitation shall not be considered to reduce the consumptive use of a water right. "Authorized consumptive use" means the maximum consumptive use that may be made of a water right. If the use of a water right is for irrigation, for example, the authorized consumptive use reflects irrigation of the most consumptive vegetation that may be grown at the place of use. Changes in consumptive use do not require a transfer pursuant to section 42-222, Idaho Code.

(2) "Digital boundary" means the boundary encompassing and defining an area consisting of or incorporating the place of use or permissible place of use for a water right prepared and maintained by the department of water resources using a geographic information system in conformance with the national standard for spatial data accuracy or succeeding standard.

(3) "Local public interest" is defined as the interests that the people in the

area directly affected by a proposed water use have in the effects of such use on the public water resource.

(4) "Municipality" means a city incorporated under section 50-102, Idaho Code, a county, or the state of Idaho acting through a department or institution.

(5) "Municipal provider" means:

(a) A municipality that provides water for municipal purposes to its residents and other users within its service area;

(b) Any corporation or association holding a franchise to supply water for municipal purposes, or a political subdivision of the state of Idaho authorized to supply water for municipal purposes, and which does supply water, for municipal purposes to users within its service area; or

(c) A corporation or association which supplies water for municipal purposes through a water system regulated by the state of Idaho as a "public water supply" as described in section 39-103(12), Idaho Code.

(6) "Municipal purposes" refers to water for residential, commercial, industrial, irrigation of parks and open space, and related purposes, excluding use of water from geothermal sources for heating, which a municipal provider is entitled or obligated to supply to all those users within a service area, including those located outside the boundaries of a municipality served by a municipal provider.

(7) "Planning horizon" refers to the length of time that the department determines is reasonable for a municipal provider to hold water rights to meet reasonably anticipated future needs. The length of the planning horizon may vary according to the needs of the particular municipal provider.

(8) "Reasonably anticipated future needs" refers to future uses of water by a municipal provider for municipal purposes within a service area which, on the basis of population and other planning data, are reasonably expected to be required within the planning horizon of each municipality within the service area not inconsistent with comprehensive land use plans approved by each municipality. Reasonably anticipated future needs shall not include uses of water within areas overlapped by conflicting comprehensive land use plans.

(9) "Service area" means that area within which a municipal provider is or becomes entitled or obligated to provide water for municipal purposes. For a municipality, the service area shall correspond to its corporate limits, or other recognized boundaries, including changes therein after the permit or license is issued. The service area for a municipality may also include areas outside its corporate limits, or other recognized boundaries, that are within the municipality's established planning area if the constructed delivery system for the area shares a common water distribution system with lands located within the corporate limits. For a municipal provider that is not a municipality, the service area shall correspond to the area that it is authorized or obligated to serve, including changes therein after the permit or license is issued.

**History.**

I.C., § 42-202B, as added by 1996, ch. 297, § 2, p. 967; am. 1997, ch. 373, § 1, p. 1188; am. 2000, ch. 132, § 36, p. 309; am. 2002, ch. 306, § 1, p. 870; am. 2003, ch. 298, § 1, p.

806; am. 2004, ch. 258, § 1, p. 733; am. 2005, ch. 167, § 15, p. 509.

**Compiler's Notes.** Section 14 of S.L. 2005, ch. 167 is compiled as § 47-1518.

**42-203A. Notice upon receipt of application — Protest — Hearing and findings — Appeals.** — (1) Upon receipt of an application to appropriate the waters of this state, the department of water resources shall prepare a notice in such form as the department may prescribe, specifying: (a) the number of the application; (b) the date of filing thereof; (c) the name and post-office address of the applicant; (d) the source of the water supply; (e) the amount of water to be appropriated; (f) in general the nature of the proposed use; (g) the approximate location of the point of diversion; and (h) the point of use. The department shall also state in said notice that any protest against the approval of such application, in form prescribed by the department, shall be filed with the department within ten (10) days from the last date of publication of such notice.

(2) The director of the department of water resources shall cause the notice to be published in a newspaper printed within the county wherein the point of diversion lies or, in the event no newspaper is printed in said county, then in a newspaper of general circulation therein. When the application proposes a diversion in excess of ten (10) c.f.s. or one thousand (1,000) acre feet, the director shall cause the notice to be published in a newspaper or newspapers sufficient to achieve statewide circulation. Any notice shall be published at least once each week for two (2) successive weeks.

(3) The director of the department shall also cause notice of the application to be accessible from the department's internet homepage beginning on or before the date the application is first published in the newspaper as described in subsection (2) of this section, and ending no sooner than the deadline for protesting the application, consistent with subsection (1) of this section. Notice accessible from the internet homepage may be represented by an abstract, summary, or other such representation that includes all the information required by subsection (1) of this section for notice of an application. The notice published in the newspaper pursuant to subsection (2) of this section shall be the official notice. Errors or omissions in the notices accessible from the internet homepage shall not invalidate the published notice.

(4) Any person, firm, association or corporation concerned in any such application may, within the time allowed in the notice of application, file with said director of the department of water resources a written protest, together with the statutory filing fee as provided in section 42-221, Idaho Code, against the approval of such application, which protest shall state the name and address of protestant and shall be signed by him or by his agent or attorney and shall clearly set forth his objections to the approval of such application. Hearing upon the protest so filed shall be held within sixty (60) days from the date such protest is received. Notice of this hearing shall be given by mailing notice not less than ten (10) days before the date of hearing and shall be forwarded to both the applicant and the protestant, or



protestants, by certified mail. Such notice shall state the names of the applicant and protestant, or protestants, the time and place fixed for the hearing and such other information as the director of the department of water resources may deem advisable. In the event that no protest is filed, then the director of the department of water resources may forthwith approve the application, providing the same in all respects conforms with the requirements of this chapter, and with the regulations of the department of water resources.

(5) Such hearing shall be conducted in accordance with the provisions of section 42-1701A(1) and (2), Idaho Code. The director of the department of water resources shall find and determine from the evidence presented to what use or uses the water sought to be appropriated can be and are intended to be applied. In all applications whether protested or not protested, where the proposed use is such: (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or (c) where it appears to the satisfaction of the director that such application is not made in good faith, is made for delay or speculative purposes, or (d) that the applicant has not sufficient financial resources with which to complete the work involved therein, or (e) that it will conflict with the local public interest as defined in section 42-202B, Idaho Code, or (f) that it is contrary to conservation of water resources within the state of Idaho, or (g) that it will adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates, in the case where the place of use is outside of the watershed or local area where the source of water originates; the director of the department of water resources may reject such application and refuse issuance of a permit therefor, or may partially approve and grant a permit for a smaller quantity of water than applied for, or may grant a permit upon conditions. Provided however, that minimum stream flow water rights may not be established under the local public interest criterion, and may only be established pursuant to chapter 15, title 42, Idaho Code. The provisions of this section shall apply to any boundary stream between this and any other state in all cases where the water sought to be appropriated has its source largely within the state, irrespective of the location of any proposed power generating plant.

(6) Any person or corporation who has formally appeared at the hearing, aggrieved by the judgment of the director of the department of water resources, may seek judicial review thereof in accordance with section 42-1701A(4), Idaho Code.

#### **History.**

C.S., § 5569A, as added by 1929, ch. 212, § 1, p. 429; I.C.A., § 41-203; am. 1935, ch. 145, § 2, p. 353; am. 1967, ch. 374, § 2, p. 1079; am. 1969, ch. 469, § 1, p. 1346; am. 1978, ch. 306, § 1, p. 767; am. 1980, ch. 238, § 2, p. 526; am and redesisg. 1985, ch. 17, § 1, p. 23; am. 1990, ch. 141, § 4, p. 316; am. 1994, ch. 64, § 1, p. 121; am. 2003, ch. 298, § 2, p. 806; am. 2011, ch. 170, § 1, p. 488.

**Compiler's Notes.** The 2011 amendment,

by ch. 170, rewrote subsection (3), which formerly read: "The director of the department shall cause a copy of the notice of application to be sent by ordinary mail to any person who requests in writing to receive any class of notices of application and who pays an annual mailing fee as established by departmental regulation."

#### **Vesting of Rights.**

A water right does not vest until the statu-



tory procedures for obtaining a license are completed, including the issuance of the license. Idaho Power Co. v. Idaho Dep't of Water Res. (In re Licensed Water Right No. 03-7018), 151 Idaho 266, 255 P.3d 1152 (2011).

**42-203B. Authority to subordinate rights — Nature of subordinated water right and authority to establish a subordination condition — Authority to limit term of permit or license. —** (1) The legislature finds and declares that it is in the public interest to specifically implement the state's power to regulate and limit the use of water for power purposes and to define the relationship between the state and the holder of a water right for power purposes to the extent such right exceeds an established minimum flow. The purposes of the trust established by subsections (2) and (3) of this section are to assure an adequate supply of water for all future beneficial uses and to clarify and protect the right of a user of water for power purposes subordinated by a permit issued after July 1, 1985, or by an agreement, to continue using the water pending approval of depletionary future beneficial uses.

(2) A water right for power purposes which is defined by agreement with the state as unsubordinated to the extent of a minimum flow established by state action shall remain unsubordinated as defined by the agreement. Any portion of the water rights for power purposes in excess of the level so established shall be held in trust by the state of Idaho, by and through the governor, for the use and benefit of the user of the water for power purposes, and of the people of the state of Idaho; provided, however, that application of the provisions of this section to water rights for hydropower purposes on the Snake river or its tributaries downstream from Milner dam shall not place in trust any water from the Snake river or surface or ground water tributary to the Snake river upstream from Milner dam. For the purposes of the determination and administration of rights to the use of the waters of the Snake river or its tributaries downstream from Milner dam, no portion of the waters of the Snake river or surface or ground water tributary to the Snake river upstream from Milner dam shall be considered. The rights held in trust shall be subject to subordination to and depletion by future upstream beneficial users whose rights are acquired pursuant to state law, including compliance with the requirements of section 42-203C, Idaho Code.

(3) Water rights for power purposes not defined by agreement with the state shall not be subject to depletion below any applicable minimum stream flow established by state action. Water rights for power purposes in excess of such minimum stream flow shall be held in trust by the state of Idaho, by and through the governor, for the use and benefit of the users of water for power purposes and of the people of the state of Idaho. The rights held in trust shall be subject to subordination to and depletion by future consumptive upstream beneficial users whose rights are acquired pursuant to state law, excluding compliance with the requirements of section 42-203C, Idaho Code.

(4) The user of water for power purposes as beneficiary of the trust established in subsections (2) and (3) of this section shall be entitled to use water available at its facilities to the extent of the water right, and to protect its rights to the use of the water as provided by state law against depletions or claims not in accordance with state law.

(5) The governor or his designee is hereby authorized and empowered to enter into agreements with holders of water rights for power purposes to define that portion of their water rights at or below the level of the applicable minimum stream flow as being unsubordinated to upstream beneficial uses and depletions, and to define such rights in excess thereof as being held in trust by the state under subsection (2) of this section. Such agreements shall be subject to ratification by law. The contract entered into by the governor and the Idaho power company on October 25, 1984, is hereby found and declared to be such an agreement, and the legislature hereby ratifies the governor's authority and power to enter into this agreement.

(6) The director shall have the authority to subordinate the rights granted in a permit or license for power purposes to subsequent upstream beneficial depletionary uses. A subordinated water right for power use does not give rise to any claim against, or right to interfere with, the holder of subsequent upstream rights established pursuant to state law. The director shall also have the authority to limit a permit or license for power purposes to a term, which may be in the form of a fixed date or by reference to a federal energy regulatory commission (FERC) license or other authorization issued or contract executed, in connection with the power project.

Subsection (6) of this section shall not apply to licenses which have already been issued as of July 1, 1985.

(7) The director, in the exercise of the authority to limit a permit or license for power purposes to a term, shall, for purposes of determining such term, consider any of the following factors, among others:

(a) The term of any power purchase contract which is, or reasonably may become, applicable to, such permit or license;

(b) The policy of the Idaho public utilities commission (IPUC) regarding the term of power purchase contracts as administered by the IPUC under and pursuant to the authority of the public utility regulatory policy act of 1978 (PURPA);

(c) The term of any FERC license granted, or which reasonably may be granted, with respect to any particular permit or license for power purpose;

(d) Existing downstream water uses established pursuant to state law. The term shall be determined at the time of issuance of the permit, or as soon thereafter as practicable if adequate information is not then available. The term shall commence upon application of water to beneficial use. The term, once established, shall not thereafter be modified except in accordance with due process of law prior to expiring.

(8) If a term is established by the director by reference to the hydropower project's FERC license, the term shall automatically extend to run concurrently with any annual renewals of the project's FERC license. Prior to the issuance of a subsequent or new FERC license for the project, the director may review the water right license and may issue an order canceling all or any part of the use, establishing a new term, or revising, adding or deleting conditions under which the water right may be exercised. The order shall take effect on the date the current term, as may be extended through annual



renewals, expires. If the director does not issue such an order, the term shall automatically extend to a length equal to the project's subsequent or new FERC license and any original conditions on the water right license shall remain in effect.

(9) If a term is established by the director but the term is not established by reference to a hydropower project's FERC license, the director may review the water right license prior to the expiration of the term and may issue an order canceling all or any part of the use, establishing a new term of years, or revising, adding or deleting conditions under which the water right may be exercised. The order shall take effect on the date the current term expires. If the director does not issue such an order, the term shall automatically extend to a length equal to the original term and any original conditions on the water right license shall remain in effect.

#### History.

I.C., § 42-203B, as added by 1985, ch. 17, § 2, p. 23 and ch. 224, § 1, p. 537; am. 1986, ch. 117, § 1, p. 308; am. 2013, ch. 45, § 1, p. 94.

**Compiler's Notes.** The 2013 amendment, by ch. 45, in subsection (6), substituted "term, which may be in the form of a fixed date or by reference to a federal energy regulatory commission (FERC) license or other authorization issued or contract executed, in connection with the power project" for "specific term" at the end of the first paragraph and substituted "July 1, 1985" for "the effective date of this act" at the end of the second paragraph; in subsection (7), rewrote the introductory paragraph, which formerly read: "The director in the exercise of the authority to limit a permit or license for power purposes to a specific term of years shall designate the number of years through which the term of the license shall extend and for purposes of determining such date shall consider among other factors", substituted "FERC license" for "federal energy regulatory commission (FERC) license" near the beginning of paragraph (c), in the undesignated paragraph following paragraph (d), deleted "of years" following "The term" near the beginning of the first three sentences

and added "prior to expiring" at the end; and added subsections (8) and (9).

As to federal energy regulatory commission, see <http://www.ferc.gov>.

The abbreviations enclosed in parentheses so appeared in the law as enacted.

**Cross Reference.** Idaho public utilities commission, § 61-201 et seq.

#### ANALYSIS

Term condition.

Vesting of rights.

#### Term Condition.

The plain language of this section gives the department of water resources the authority to include a term condition in a license to divert water for power generation, even if such a term was not included in the original permit. *Idaho Power Co. v. Idaho Dep't of Water Res.* (In re Licensed Water Right No. 03-7018), 151 Idaho 266, 255 P.3d 1152 (2011).

#### Vesting of Rights.

A water right does not vest until the statutory procedures for obtaining a license are completed, including the issuance of the license. *Idaho Power Co. v. Idaho Dep't of Water Res.* (In re Licensed Water Right No. 03-7018), 151 Idaho 266, 255 P.3d 1152 (2011).

**42-204. Examination — Permit — Commencement of work — Extensions — Appeal.** — On receipt of the application, which shall be of a form prescribed by the department of water resources, it shall be the duty of that department to make an endorsement thereon of the date of its receipt, and to examine said application and ascertain if it sets forth all the facts necessary to show the location, nature and amount of the proposed use. If upon such examination the application is found defective, it shall be the duty of the department of water resources to return the same for correction or to correspond with the applicant to obtain the needed information or amendments. If the application is returned to the applicant or the department shall request additional information and the applicant fails to return

the corrected application or to supply the needed information within thirty (30) days, the department may void the record of said application and notify the applicant of such action. If the corrected application is returned or the information is supplied after thirty (30) days, such corrected application shall be treated in all respects as a new application, and the priority of the right initiated shall be determined by the date of receipt, in the office of the department, of the corrected application or additional information; provided, that upon request, and good cause appearing therefor, the director of the department of water resources may grant an extension of time within which to return the corrected application or supply needed information. All applications which shall comply with the provisions of this chapter and with the regulations of the department of water resources shall be numbered in such manner as will aid in their identification, and it shall be the duty of the department to approve all applications, made in proper form, which contemplate the application of water to a beneficial use: provided, that the department may deny any such application, or may partially approve and grant a permit for a lesser quantity of water than applied for, or may grant a permit upon conditions as provided in the preceding section.

The department of water resources shall issue a permit for any approved application, make a record of the approval and provide a copy of the permit to the applicant, who shall be authorized, on receipt thereof, to proceed with the construction of the necessary works for the diversion of such water, and to take all steps required to apply the water to a beneficial use and perfect the proposed appropriation. The department shall require that actual construction work and application of the water to full beneficial use shall be complete within a period of five (5) years from the date of such approval, but may limit the permit to a less period than is named in the application, and the permit shall set forth the date when beneficial application of the water to be diverted by such works shall be made. Sixty (60) days before the date set for the completion of the appropriation of water under any permit, the department shall forward a notice to the applicant by certified mail at his address of record of the date for such completion, which said notice shall advise the applicant of the necessity of submitting an affidavit of completion or a request for an extension of time on or before said date; Provided that:

(1) In cases where the applicant is prevented from proceeding with his work by his failure to obtain necessary consent or final approval or rejection from the federal government because of the pendency of an application for right-of-way or other matter within the jurisdiction of the United States, by state, county, city or other local government permitting or administrative action or process related to the applicant's land or water development, or by litigation of any nature which might bring his title to said water in question, the department of water resources upon proper showing of the existence of any such condition, and being convinced that said applicant is proceeding diligently and in good faith, shall extend the time so that the amount of time lost by such delays shall be added to the time given in the original permit, or in any subsequent grant of extension pursuant to subsection (2), (3), (4) or (6) of this section, for each and every action required.

(2) The time for completion of works and application of the water to full beneficial use under any permit involving the diversion of more than



twenty-five thousand (25,000) acre feet in one (1) irrigation season for a project of no less than five thousand (5,000) acres, may upon application to the director of the department of water resources supported by a showing that additional time is needed on account of the time required for organizing, financing and constructing works of such large size, be extended by the director of the department of water resources for up to twelve (12) years beyond the initial development deadline contained in the permit, or beyond a grant of extension pursuant to the provisions of subsection (1) of this section: Provided, that no such extension shall be granted unless the applicant for such extension shall show that there has been actually expended toward the construction of said diversion, including expenditures for the purchase of rights-of-way and property in connection therewith, at least one hundred thousand dollars (\$100,000).

(3) The time for completion of works and application of the water to full beneficial use under any permit involving the construction of a reservoir of more than ten thousand (10,000) acre feet capacity or for the appropriation of water to be impounded in such reservoir of more than ten thousand (10,000) acre feet capacity, may be extended by the director of the department of water resources upon application to the director if the permittee establishes that the permittee has exercised reasonable diligence and that good cause exists for the requested extension.

(4) The time for completion of works and application of the water to full beneficial use under any permit involving the diversion of two (2) or more cubic feet per second or the development or cultivation of one hundred (100) or more acres of land may be extended by the director of the department of water resources upon application by the permittee for an additional period up to ten (10) years beyond the initial development deadline contained in the permit, or beyond a grant of extension pursuant to the provisions of subsection (1) of this section, provided the permittee establishes that the permittee has exercised reasonable diligence and that good cause exists for the requested extension.

(5) In connection with permits held by the United States, or the Idaho water resource board, whether acquired as the original applicant, by assignment or otherwise, the director of the department of water resources may extend the time for completion of the works and application of the water to full beneficial use for such additional period or periods of time as he may deem necessary upon application supported by a showing that such additional time is required by reason of the status of plans, authorization, construction fund appropriations, construction, or any arrangements which are found to be requisite to completion of the construction of such works.

(6) In all other situations not governed by these provisions the department may grant one (1) extension of time, not exceeding five (5) years beyond the date originally set for completion of works and application of the water to full beneficial use, or beyond any grant of extension pursuant to the provisions of subsection (1) of this section, upon request for extension received on or before the date set for completion, provided good cause appears therefor.

Any applicant feeling himself aggrieved by the decision of the department of water resources regarding his application may request a hearing before

the director in accordance with section 42-1701A(3), Idaho Code, for the purpose of contesting the decision and may seek judicial review pursuant to section 42-1701A(4), Idaho Code, of any final decision of the director following the hearing.

Every holder of a permit which shall be issued under the terms and conditions of an application filed hereafter appropriating twenty-five (25) cubic feet or less per second must, within one (1) year from the date upon which said permit issues from the office of the department of water resources, commence the excavation or construction of the works by which he intends to divert the water, and must prosecute the work diligently and uninterruptedly to completion, unless temporarily interrupted through no fault of the holder of such permit by circumstances, over which he has no control.

The holder of any permit who shall fail to comply with the provisions of this section within the time or times specified shall be deemed to have abandoned all rights under his permit.

#### History.

1903, p. 223, § 2; am. 1905, p. 357, § 2; reen. R.C., § 3254; am. 1911, ch. 64, § 1, p. 184; am. 1915, ch. 133, § 1, p. 289; reen. C.L., § 3254; C.S., § 5570; am. 1923, ch. 135, § 1, p. 196; I.C.A., § 41-204; am. 1935, ch. 145, § 3, p. 353; am. 1941, ch. 161, § 1, p. 320; am. 1949, ch. 127, § 1, p. 222; am. 1963, ch. 214, § 1, p. 618; am. 1967, ch. 374, § 3, p. 1079; am. 1980, ch. 238, § 3, p. 526; am. 1982, ch. 62, § 1, p. 122; am. 1986, ch. 313, § 3, p. 763; am. 1989, ch. 96, § 1, p. 223; am. 2013, ch. 82, § 1, p. 201.

**Compiler's Notes.** The 2013 amendment, by ch. 82, in subsection (1), inserted "by state, county, city or other local government permitting or administrative action or process related to the applicant's land or water development" near the middle and "or in any subsequent grant of extension pursuant to subsection (2), (3), (4) or (6) of this section" near the end; in subsection (2), substituted "for up to twelve (12) years beyond the initial development deadline contained in the permit" for "for an additional period of seven (7) years, but not to exceed twelve (12) years in all from the date of permit" and inserted "or beyond a grant of extension pursuant to the

provisions of subsection (1) of this section"; added subsection (4) and redesignated the subsequent subsections accordingly; and inserted "or beyond a grant of extension pursuant to the provisions of subsection (1) of this section."

Section 2 of S.L. 2013, ch. 82 provided: "An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval regarding all permits pending before the Idaho department of water resources. Permits pending before the department are entitled to the maximum qualifying extension available pursuant to the provisions of section 42-204, Idaho Code, regardless of whether the permittee received a prior extension under section 42-204(6), Idaho Code." Approved March 15, 2013.

**Cross Reference.** Department of water resources, § 42-1701 et seq.

#### Vesting of Rights.

A water right does not vest until the statutory procedures for obtaining a license are completed, including the issuance of the license. *Idaho Power Co. v. Idaho Dep't of Water Res.* (In re Licensed Water Right No. 03-7018), 151 Idaho 266, 255 P.3d 1152 (2011).

## 42-217. Proof of application to beneficial use.

#### ANALYSIS

Beneficial use.  
Federal law.  
Vesting of rights.

#### Beneficial Use.

Entity that applies the water to beneficial use has a right that is more than a contractual right. *United States v. Pioneer Irrigation*

*Dist.* (In re SRBA Case No. 3957), 144 Idaho 106, 157 P.3d 600 (2007).

#### Federal Law.

Where the United States bureau of reclamation (BOR) filed water right claims against irrigation entities regarding projects developed pursuant to the Reclamation Act of 1902, any rights held by BOR were subject to rights of the beneficial users that were served by the

irrigation districts because, inter alia, (1) federal law deferred to state law in determining the rights to water in the reclamation projects, (2) the beneficial users had an interest that was stronger than mere contractual expectancy, and (3) title to the use of the water was held by the consumers or users of the water. *United States v. Pioneer Irrigation Dist.* (In re SRBA Case No. 3957), 144 Idaho 106, 157 P.3d 600 (2007).

### **Vesting of Rights.**

A water right does not vest until the statutory procedures for obtaining a license are completed, including the issuance of the license. *Idaho Power Co. v. Idaho Dep't of Water Res.* (In re Licensed Water Right No. 03-7018), 151 Idaho 266, 255 P.3d 1152 (2011).

### **42-218a. Lapse of application for failure to request extension or submit proof of application to beneficial use — Notice of lapsing. —**

A permit upon which the proof of beneficial use has not been submitted, or a request for extension of time has not been received on or before the date set for such proof, shall lapse and be of no further force nor effect. Notice of said lapsing shall be sent by the department to the permit holder at the address of record by regular mail.

(1) Within sixty (60) days after such notice of lapsing the department may, upon a showing of reasonable cause, reinstate the permit with the priority date advanced a time equal to the number of days that said showing is subsequent to the date set for proof.

(2) In connection with a proof of beneficial use statement submitted more than sixty (60) days after such notice of lapsing, the director shall require all of the following items to be submitted to the department:

(a) A report prepared by a certified water right examiner as the result of an examination to clearly confirm and establish the extent of the beneficial use of water established in connection with the permit during the time authorized by the permit and any extensions of time previously approved. The report shall be on the form or forms specified by the director and shall provide the information specified in section 42-217, Idaho Code, for confirming beneficial use and such other information as may be required by the director.

(b) A statement of reasonable cause for filing a late proof of beneficial use.

(c) A reinstatement fee of two hundred fifty dollars (\$250).

Upon finding that beneficial use had occurred during the authorized period and upon a showing of reasonable cause for filing a late proof of beneficial use, the director may reinstate the permit with the priority date advanced to the day that proof of beneficial use was received.

(3) The original priority date of a lapsed permit shall not be reinstated except upon a showing of error or mistake of the department.

### **History.**

I.C., § 42-218a, as added by 1967, ch. 374, § 10, p. 1079; am. 1983, ch. 157, § 1, p. 435; am. 2011, ch. 171, § 1, p. 490.

**Compiler's Notes.** The 2011 amendment, by ch. 171, in the first paragraph, substituted "permit holder" for "applicant" and deleted "provided" from the end; and rewrote subsection (2), which formerly read: "That upon receipt of proof of beneficial use after sixty

(60) days after such notice of lapsing, the director shall require sufficient evidence to be submitted by the permit holder to clearly establish the extent of beneficial use made during the time authorized by the permit and any extensions of time previously approved. Upon finding that beneficial use had occurred during the authorized period and upon a showing of reasonable cause for filing a late proof of beneficial use, the director may rein-



state the permit with the priority date advanced to the day that proof of beneficial use was received.”

**42-219. Issuance of license — Priority.** — (1) Upon receipt by the department of water resources of all the evidence in relation to such final proof, it shall be the duty of the department to carefully examine the same, and if the department is satisfied that the law has been fully complied with and that the water is being used at the place claimed and for the purpose for which it was originally intended, the department shall issue to such user or users a license confirming such use. Such license shall state the name and post-office address of such user, the purpose for which such water is used and the quantity of water which may be used, which in no case shall be an amount in excess of the amount that has been beneficially applied. A license may be issued to a municipal provider for an amount up to the full capacity of the system constructed or used in accordance with the original permit provided that the director determines that the amount is reasonably necessary to provide for the existing uses and reasonably anticipated future needs within the service area and otherwise satisfies the definitions and requirements specified in this chapter for such use. The director shall condition the license to prohibit any transfer of the place of use outside the service area, as defined in section 42-202B, Idaho Code, or to a new nature of use of amounts held for reasonably anticipated future needs together with such other conditions as the director may deem appropriate.

(2) If such use is for irrigation, such license shall give a description, by legal subdivisions, of the land which is irrigated by such water, except that the general description of a place of use described in accordance with subsection (5) or (6) of this section may be described using a digital boundary, as defined in section 42-202B, Idaho Code. If the use is for municipal purposes, the license shall describe the service area and shall state the planning horizon for that portion of the right, if any, to be used for reasonably anticipated future needs.

(3) Such license shall bear the date of the application for, and the number of, the permit under which the works from which such water is taken were constructed, the date when proof of beneficial use of such water was made, and also the date of the priority of the right confirmed by such license.

(4) The date of priority confirmed by the license shall be the date of the application for the permit for the construction of the works from which the water is taken, and to which the right relates, provided there has been no loss of priority under the provisions of this chapter. Whenever proof of the beneficial application of water shall be offered subsequent to the date stated in the permit, or in any authorized extension thereof, when such beneficial application shall be made, the proof shall be taken, if received by the department within the sixty (60) days prescribed in the preceding section. If the proof taken is satisfactory to the department of water resources, a license shall be issued by the department the same as though proof had been made before the date fixed for such beneficial application. The priority of the right established by the proof shall not date back to the date of the application for the permit to which the right would relate under the



provisions of this chapter, but shall bear a date which shall be subsequent to the date of the application, a time equal to the difference between the date set in the permit, or extension thereof, for such beneficial application of water and the date of proof.

(5) For irrigation projects where the canals constructed cover an area of twenty-five thousand (25,000) acres or more, or within irrigation districts organized and existing as such under the laws of the state of Idaho, the license issued shall be issued to the persons, association, company, corporation or irrigation district owning the project, and final proof may be made by such owners for the benefit of the entire project. It shall not be necessary to give a description of the land by legal subdivisions but a general description of the entire area under the canal system shall be sufficient. The water diverted and the water right acquired thereby shall relate to the entire project and the diversion of the water for the beneficial use under the project shall be sufficient proof of beneficial use without regard as to whether each and every acre under the project is irrigated or not.

(6) For an irrigation project developed under a permit held by an association, company, corporation or the United States to divert and deliver or distribute surface water under any annual charge or rental for beneficial use by more than five (5) water users in an area of less than twenty-five thousand (25,000) acres, the license issued shall be issued to the permit holder. For the place of use description in the license issued for the irrigation project, it shall be sufficient to provide a general description of the area within which the total number of acres developed under the permit are located and within which the location of the licensed acreage can be moved provided there is no injury to other water rights.

(7) Subject to other governing law, the location of the acreage irrigated within a generally described place of use, as defined in accordance with subsections (5) and (6) of this section and as filed with the department pursuant to section 43-323, Idaho Code, may be changed without approval under the provisions of section 42-222, Idaho Code. However, the change shall not result in an increase in either the rate of flow diverted or in the total number of acres irrigated under the water right and shall cause no injury to other water rights. If the holder of any water right seeks to challenge such a change, the challenge may only be brought as an action initiating a contested case before the department, pursuant to the administrative procedure act, chapter 52, title 67, Idaho Code. Nothing in this section shall be construed to grant, deny or otherwise affect an irrigation district's authority to deliver water to areas outside the boundaries of such district.

(8) In the event that the department shall find that the applicant has not fully complied with the law and the conditions of permit, it may issue a license for that portion of the use which is in accordance with the permit, or may refuse issuance of a license and void the permit. Notice of such action shall be forwarded to the permit holder by certified mail. The applicant may contest such action by the department pursuant to section 42-1701A(3), Idaho Code.

**History.**

1903, p. 233, § 8; reen. R. C., § 3261; modified by 1913, ch. 47, § 1, p. 154, and 1915, ch. 94, § 2, p. 216; compiled and reen. C. L., § 3261; C. S., § 5579; am. 1925, ch. 44, § 1, p. 61; I. C. A., § 41-213; am. 1967, ch. 374, § 11, p. 1079; am. 1980, ch. 238, § 5, p. 526; am. 1996, ch. 297, § 4, p. 967; am. 1998, ch. 332, § 2, p. 1065; am. 2002, ch. 306, § 2, p. 870; am. 2011, ch. 210, § 1, p. 591.

**Compiler's Notes.**

The 2011 amendment, by ch. 210, in the second sentence in subsection (1), deleted "shall be issued under the seal of the office of the department of water resources, and" following "Such license"; and, in subsection (3), deleted "the capacity of such works" following "constructed."

**ANALYSIS**

- Beneficial use.
- Federal law.
- Vesting of rights.

**Beneficial Use.**

Entropy that applies the water to beneficial use has a right that is more than a contractual right. *United States v. Pioneer Irrigation Dist.* (In re SRBA Case No. 3957), 144 Idaho 106, 157 P.3d 600 (2007).

**42-220. Effect of license.**

**Beneficial Use.**

Where the United States bureau of reclamation (BOR) filed water right claims against irrigation entities regarding projects developed pursuant to the Reclamation Act of 1902, any rights held by BOR were subject to rights of the beneficial users that were served by the irrigation districts because, inter alia, (1) federal law deferred to state law in determining

**Federal Law.**

Where the United States bureau of reclamation (BOR) filed water right claims against irrigation entities regarding projects developed pursuant to the Reclamation Act of 1902, any rights held by BOR were subject to rights of the beneficial users that were served by the irrigation districts because, inter alia, (1) federal law deferred to state law in determining the rights to water in the reclamation projects, (2) the beneficial users had an interest that was stronger than mere contractual expectancy, and (3) title to the use of the water was held by the consumers or users of the water. *United States v. Pioneer Irrigation Dist.* (In re SRBA Case No. 3957), 144 Idaho 106, 157 P.3d 600 (2007).

**Vesting of Rights.**

A water right does not vest until the statutory procedures for obtaining a license are completed, including the issuance of the license. *Idaho Power Co. v. Idaho Dep't of Water Res.* (In re Licensed Water Right No. 03-7018), 151 Idaho 266, 255 P.3d 1152 (2011).

**Idaho Law Review.** Why Does Idaho's Water Law Regime Provide for Forfeiture of Water Rights?, Peter R. Anderson and Aaron J. Kraft. 48 Idaho L. Rev. 419 (2012).

the rights to water in the reclamation projects, (2) the beneficial users had an interest that was stronger than mere contractual expectancy, and (3) title to the use of the water was held by the consumers or users of the water. *United States v. Pioneer Irrigation Dist.* (In re SRBA Case No. 3957), 144 Idaho 106, 157 P.3d 600 (2007).

**42-221. Fees of department.** — The department of water resources shall collect the following fees which shall constitute a fund to pay for legal advertising, the publication of public notices and for investigations, research, and providing public data as required of the department in the performance of its statutory duties:

- A. For filing an application for a permit to appropriate the public waters of this state:
  - 1. For a quantity of 0.2 c.f.s. or less or for a storage volume of 20 acre feet or less ..... \$100
  - 2. For a quantity greater than 0.2 c.f.s. but not exceeding 1.0 c.f.s. or for a storage volume greater than 20 acre feet but not exceeding 100 acre feet ..... \$250
  - 3. For a quantity greater than 1.0 c.f.s. but not exceeding 20 c.f.s., or for a storage volume greater than 100 acre feet but not exceeding 2,000 acre feet ..... \$250

plus \$40.00 for each additional c.f.s. or part thereof or 100 acre feet or part thereof over the first 1.0 c.f.s. or 100 acre feet.

4. For a quantity greater than 20.0 c.f.s. but not exceeding 100 c.f.s. or for a storage volume greater than 2,000 acre feet but not exceeding 10,000 acre feet ..... \$1,010

plus \$20.00 for each additional c.f.s. or part thereof or 100 acre feet or part thereof over the first 20.0 c.f.s. or 2,000 acre feet.

5. For a quantity greater than 100.0 c.f.s. but not exceeding 500.0 c.f.s., or for a storage volume greater than 10,000 acre feet but not exceeding 50,000 acre feet ..... \$2,610

plus \$10.00 for each additional c.f.s. or part thereof or 100 acre feet or part thereof over the first 100 c.f.s. or 10,000 acre feet.

6. For a quantity greater than 500 c.f.s., or for a storage volume greater than 50,000 acre feet ..... \$6,610  
plus \$2.00 for each additional 1.0 c.f.s. or part thereof or 100 acre feet or part thereof over the first 500.0 c.f.s. or 50,000 acre feet.

B. For filing an application for an extension of time within which to resume the use of water under a vested water right ..... \$100

C. For filing application for amendment of permit ..... \$100

D.1. For filing claim to use right under section 42-243, Idaho Code ..... \$100

2. For filing a late claim to use a water right under section 42-243, Idaho Code, where the date filed with the department of water resources or, the postmark if mailed to the department of water resources, is:

i. After June 30, 1998 ..... \$250

ii. After June 30, 2005 ..... \$500

iii. For every ten (10) years after June 30, 2005, an additional .. \$500

E. For filing an assignment of permit ..... \$25.00

F. For readvertising application for permit, change, exchange, or extension to resume use ..... \$50.00

G. For certification, each document ..... \$1.00

H. For making photo copies of office records, maps and documents for public use ..... A reasonable charge as determined by the department.

I. For filing request for extension of time within which to submit proof of beneficial use on a water right permit ..... \$50.00

J. For tasks requiring in excess of one (1) hour research or for computerized data provided for public use .....  
..... A reasonable charge as determined by the department.

K. For filing proof of beneficial use of water and requests for water right license examinations, a fee based upon the rate of diversion claimed in the proof of beneficial use:

1. For a quantity of 0.2 c.f.s. or less, or for a storage volume of 20 acre feet or less ..... \$50.00  
except no fee shall be charged for domestic use for which a permit is not required.

2. For a quantity greater than 0.2 c.f.s. but not exceeding 1.0 c.f.s., or for a storage volume greater than 20 acre feet, but not exceeding 100 acre feet ..... \$100



3. For a quantity greater than 1.0 c.f.s., or for a storage volume greater than 100 acre feet ..... \$100 plus \$25.00 for each additional c.f.s. or part thereof, or 100 acre feet or part thereof, over the first 1.0 c.f.s. or 100 acre feet with a maximum fee not to exceed \$600.

L. For filing a protest or request to intervene in a protested matter ..... \$25.00

M. For filing an application to alter a stream channel pursuant to chapter 38, title 42, Idaho Code:

1. Application for recreational dredge permits by residents of the state ..... \$10.00

2. Application for recreational dredge permits by nonresidents of the state ..... \$30.00

3. Other applications ..... \$20.00

N. For receipt of all notices of application within a designated area, a reasonable annual charge as determined by the department.

O. For filing an application to change the point of diversion, place, period or nature of use of water under a vested water right:

1. For a quantity of 0.2 c.f.s. or less, or for a storage volume of 20 acre feet or less ..... \$200

2. For a quantity greater than 0.2 c.f.s. but not exceeding 1.0 c.f.s., or for a storage volume greater than 20 acre feet but not exceeding 100 acre feet ..... \$500

3. For a quantity greater than 1.0 c.f.s. but not exceeding 20 c.f.s., or for a storage volume greater than 100 acre feet but not exceeding 2,000 acre feet ..... \$500 plus \$80.00 for each additional c.f.s. or part thereof or 100 acre feet or part thereof over the first 1.0 c.f.s. or 100 acre feet.

4. For a quantity greater than 20.0 c.f.s. but not exceeding 100 c.f.s., or for a storage volume greater than 2,000 acre feet but not exceeding 10,000 acre feet ..... \$2,020 plus \$40.00 for each additional c.f.s. or part thereof or 100 acre feet or part thereof over the first 20.0 c.f.s. or 2,000 acre feet.

5. For a quantity greater than 100 c.f.s. but not exceeding 500 c.f.s., or for a storage volume greater than 10,000 acre feet but not exceeding 50,000 acre feet ..... \$5,220 plus \$20.00 for each additional c.f.s. or part thereof or 100 acre feet or part thereof over the first 100 c.f.s. or 10,000 acre feet.

6. For a quantity greater than 500 c.f.s., or for a storage volume greater than 50,000 acre feet ..... \$13,220 plus \$4.00 for each additional c.f.s. or part thereof or 100 acre feet or part thereof over the first 500 c.f.s. or 50,000 acre feet.

7. For any application to change the nature of use of water under one (1) or more vested water right(s), an additional fee of \$250 shall apply.

P. For filing a notice of land application of effluent as required by section 42-201(8), Idaho Code ..... \$150

All fees received by the department of water resources under the provisions of this chapter shall be transmitted to the state treasurer for deposit in the water administration account.

**History.**

1903, p. 223, § 10; am. 1905, p. 174, § 1; reen. R.C. & C.L., § 3263; C.S., § 5581; am. 1923, ch. 53, § 1, p. 60; I.C.A., § 41-215; am. 1941, ch. 116, § 1, p. 228; am. 1967, ch. 374, § 12, p. 1079; am. 1968 (2nd E.S.), ch. 25, § 1, p. 47; am. 1971, ch. 151, § 1, p. 750; am. 1978, ch. 143, § 1, p. 323; am. 1980, ch. 151, § 1, p. 320; am. 1981, ch. 147, § 2, p. 253; am. 1983, ch. 61, § 2, p. 141; am. 1985, ch. 226, § 1, p. 540; am. 1986, ch. 242, § 2, p. 657; am. 1986, ch. 313, § 4, p. 763; am. 1990, ch. 319, § 2, p. 870; am. 1994, ch. 64, § 2, p. 121; am. 1997, ch. 305, § 1, p. 908; am. 1998, ch. 79, § 1, p.

282; am. 2000, ch. 177, § 1, p. 445; am. 2011, ch. 172, § 1, p. 491; am. 2012, ch. 218, § 2, p. 596.

**Compiler's Notes.** The 2011 amendment, by ch. 172, in the introductory paragraph in subsection A., deleted "or an application to change the point of diversion, place, period or nature of use of water under a vested water right" from the end; in subsection C., substituted "\$100" for "\$50.00"; and added subsection O.

The 2012 amendment by ch. 218, added subsection P.

**42-222. Change in point of diversion, place of use, period of use, or nature of use of water under established rights — Forfeiture and extension — Appeals.** — (1) Any person, entitled to the use of water whether represented by license issued by the department of water resources, by claims to water rights by reason of diversion and application to a beneficial use as filed under the provisions of this chapter, or by decree of the court, who shall desire to change the point of diversion, place of use, period of use or nature of use of all or part of the water, under the right shall first make application to the department of water resources for approval of such change. Such application shall be upon forms furnished by the department and shall describe the right licensed, claimed or decreed which is to be changed and the changes which are proposed, and shall be accompanied by the statutory filing fee as in this chapter provided. Upon receipt of such application it shall be the duty of the director of the department of water resources to examine same, obtain any consent required in section 42-108, Idaho Code, and if otherwise proper to provide notice of the proposed change in a similar manner as applications under section 42-203A, Idaho Code. Such notice shall advise that anyone who desires to protest the proposed change shall file notice of protests with the department within ten (10) days of the last date of publication. Upon the receipt of any protest, accompanied by the statutory filing fee as provided in section 42-221, Idaho Code, it shall be the duty of the director of the department of water resources to investigate the same and to conduct a hearing thereon. He shall also advise the watermaster of the district in which such water is used of the proposed change and the watermaster shall notify the director of the department of water resources of his recommendation on the application, and the director of the department of water resources shall not finally determine the action on the application for change until he has received from such watermaster his recommendation thereof, which action of the watermaster shall be received and considered as other evidence. For applications proposing to change only the point of diversion or place of use of a water right in a manner that will not change the effect on the source for the right and any other hydraulically-connected sources from the effect resulting under the right as previously approved, and that will not affect the rights of other water users, the director of the department of water resources shall give only such notice to other users as he deems appropriate.

When the nature of use of the water right is to be changed to municipal purposes and some or all of the right will be held by a municipal provider to serve reasonably anticipated future needs, the municipal provider shall provide to the department sufficient information and documentation to establish that the applicant qualifies as a municipal provider and that the reasonably anticipated future needs, the service area and the planning horizon are consistent with the definitions and requirements specified in this chapter. The service area need not be described by legal description nor by description of every intended use in detail, but the area must be described with sufficient information to identify the general location where the water under the water right is to be used and the types and quantity of uses that generally will be made.

When a water right or a portion thereof to be changed is held by a municipal provider for municipal purposes, as defined in section 42-202B, Idaho Code, that portion of the right held for reasonably anticipated future needs at the time of the change shall not be changed to a place of use outside the service area, as defined in section 42-202B, Idaho Code, or to a new nature of use.

The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, the change is consistent with the conservation of water resources within the state of Idaho and is in the local public interest as defined in section 42-202B, Idaho Code, the change will not adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates, in the case where the place of use is outside of the watershed or local area where the source of water originates, and the new use is a beneficial use, which in the case of a municipal provider shall be satisfied if the water right is necessary to serve reasonably anticipated future needs as provided in this chapter. The director may consider consumptive use, as defined in section 42-202B, Idaho Code, as a factor in determining whether a proposed change would constitute an enlargement in use of the original water right. The director shall not approve a change in the nature of use from agricultural use where such change would significantly affect the agricultural base of the local area. The transfer of the right to the use of stored water for irrigation purposes shall not constitute an enlargement in use of the original right even though more acres may be irrigated, if no other water rights are injured thereby. A copy of the approved application for change shall be returned to the applicant and he shall be authorized upon receipt thereof to make the change and the original water right shall be presumed to have been amended by reason of such authorized change. In the event the director of the department of water resources determines that a proposed change shall not be approved as provided in this section, he shall deny the same and forward notice of such action to the applicant by certified mail, which decision shall be subject to judicial review as hereafter set forth. Provided however, minimum stream flow water rights may not be established under the local public interest criterion, and may only be established pursuant to chapter 15, title 42, Idaho Code.



(2) All rights to the use of water acquired under this chapter or otherwise shall be lost and forfeited by a failure for the term of five (5) years to apply it to the beneficial use for which it was appropriated and when any right to the use of water shall be lost through nonuse or forfeiture such rights to such water shall revert to the state and be again subject to appropriation under this chapter; except that any right to the use of water shall not be lost through forfeiture by the failure to apply the water to beneficial use under certain circumstances as specified in section 42-223, Idaho Code.

(3) Upon proper showing before the director of the department of water resources of good and sufficient reason for nonapplication to beneficial use of such water for such term of five (5) years, the director of the department of water resources is hereby authorized to grant an extension of time extending the time for forfeiture of title for nonuse thereof, to such waters for a period of not to exceed five (5) additional years.

(4) Application for an extension shall be made before the end of the five (5) year period upon forms to be furnished by the department of water resources and shall fully describe the right on which an extension of time to resume the use is requested and the reasons for such nonuse and shall be accompanied by the statutory filing fee; provided that water rights protected from forfeiture under the provisions of section 42-223, Idaho Code, are exempt from this requirement.

(a) Upon the receipt of such application it shall be the duty of the director of the department of water resources to examine the same and to provide notice of the application for an extension in the same manner as applications under section 42-203A, Idaho Code. The notice shall fully describe the right, the extension which is requested and the reason for such nonuse and shall state that any person desiring to object to the requested extension may submit a protest, accompanied by the statutory filing fee as provided in section 42-221, Idaho Code, to the director of the department of water resources within ten (10) days of the last date of publication.

(b) Upon receipt of a protest it shall be the duty of the director of the department of water resources to investigate and conduct a hearing thereon as in this chapter provided.

(c) The director of the department of water resources shall find from the evidence presented in any hearing, or from information available to the department, the reasons for such nonuse of water and where it appears to the satisfaction of the director of the department of water resources that other rights will not be impaired by granting an extension of time within which to resume the use of the water and good cause appearing for such nonuse, he may grant one (1) extension of five (5) years within which to resume such use.

(d) In his approval of the application for an extension of time under this section the director of the department of water resources shall set the date when the use of water is to be resumed. Sixty (60) days before such date the director of the department of water resources shall forward to the applicant at his address of record a notice by certified mail setting forth the date on which the use of water is to be resumed and a form for

reporting the resumption of the use of the water right. If the use of the water has not been resumed and report thereon made on or before the date set for resumption of use such right shall revert to the state and again be subject to appropriation, as provided in this section.

(e) In the event the director of the department of water resources determines that a proposed extension of time within which to resume use of a water right shall not be approved as provided in this section, he shall deny same and forward notice of such action to the applicant by certified mail, which decision shall be subject to judicial review as hereafter provided.

(5) Any person or persons feeling themselves aggrieved by the determination of the department of water resources in approving or rejecting an application to change the point of diversion, place, period of use or nature of use of water under an established right or an application for an extension of time within which to resume the use of water as provided in this section, may, if a protest was filed and a hearing held thereon, seek judicial review pursuant to section 42-1701A(4), Idaho Code. If no protest was filed and no hearing held, the applicant may request a hearing pursuant to section 42-1701A(3), Idaho Code, for the purpose of contesting the action of the director and may seek judicial review of the final order of the director following the hearing pursuant to section 42-1701A(4), Idaho Code.

**History.**

1903, p. 223, § 1; am. 1905, p. 27, § 1; am. 1907, p. 507, § 1; reen. R.C., § 3264; am. 1915, ch. 34, § 1, p. 103; am. 1917, ch. 166, § 1, p. 495; C.L., § 3264; C.S., § 5582; am. 1921, ch. 146, § 1, p. 334; I. C.A., § 41-216; am. 1933, ch. 193, § 1, p. 382; am. 1943, ch. 53, § 2, p. 101; am. 1945, ch. 63, § 1, p. 79; rep. and reen. 1969, ch. 303, § 2, p. 905; am. 1980, ch. 238, § 6, p. 526; am. 1981, ch. 147, § 3, p. 253; am. 1982, ch. 202, § 1, p. 531; am. 1986, ch. 313, § 5, p. 763; am. 1988, ch. 153, § 1, p. 273; am. 1990, ch. 141, § 5, p. 316; am. 1994, ch. 64, § 3, p. 121; am. 1996, ch. 297, § 5, p. 967; am. 1996, ch. 333, § 1, p. 1128; am. 1997, ch. 373, § 2, p. 1188; am. 2000, ch. 85, § 1, p. 181; am. 2003, ch. 298, § 3, p. 806; am. 2004, ch. 62, § 1, p. 280.

**ANALYSIS**

Public interest.  
Resumption of use.

**Public Interest.**

Idaho department of water resources' hear-

ing officer's decision to transfer water to a proposed dairy was supported by substantial and competent evidence, despite property owners' protestations, and the hearing officer properly considered local public interest, such as economic development. *Chisholm v. State Dep't of Water Res.* (In re Transfer No. 5639), 142 Idaho 159, 125 P.3d 515 (2005).

**Resumption of Use.**

Idaho department of water resources applied the resumption-of-use doctrine incorrectly, necessitating vacation of its order and remand, where although the findings indicated that the owner of senior water rights had failed to use them for a period longer than five years, there was no indication that the junior rights holders had commenced their use before the senior holder had resumed its use. *Sagewillow, Inc. v. Idaho Dep't of Water Res.*, 138 Idaho 831, 70 P.3d 669 (2003).

**Idaho Law Review.** Why Does Idaho's Water Law Regime Provide for Forfeiture of Water Rights?, Peter R. Anderson and Aaron J. Kraft. 48 Idaho L. Rev. 419 (2012).

**42-223. Exceptions or defenses to forfeiture.** — A right to the use of water shall not be lost by forfeiture pursuant to the provisions of section 42-222, Idaho Code, for a failure to apply the water to beneficial use under the conditions specified in any subsection of this section. The legislature does not intend through enactment of this section to diminish or impair any statutory or common law exception or defense to forfeiture existing on the date of enactment or amendment of this section, or to preclude judicial or



administrative recognition of other exceptions or defenses to forfeiture recognized in Idaho case law or other provisions of the Idaho Code. No provision of this section shall be construed to imply that the legislature does not recognize the existence or validity of any common law exception or defense to forfeiture existing on the date of enactment or amendment of this section.

(1) A water right appurtenant to land contracted in a federal cropland set-aside program shall not be lost or forfeited for nonuse during the contracted period. The running of any five (5) year period of nonuse for forfeiture of a water right shall be tolled during the time that the land remains in the cropland set-aside program.

(2) A water right held by a municipal provider to meet reasonably anticipated future needs shall be deemed to constitute beneficial use, and such rights shall not be lost or forfeited for nonuse unless the planning horizon specified in the license has expired and the quantity of water authorized for use under the license is no longer needed to meet reasonably anticipated future needs.

(3) A water right shall not be lost or forfeited by a failure to divert and apply the water to beneficial use if the water is not needed to maintain full beneficial use under the right because of land application of waste for disposal purposes including, but not limited to, discharge from dairy lagoons used in combination with or substituted for water diverted under the water right.

(4) A water right shall not be lost or forfeited by a failure to divert and apply the water to beneficial use if the reason for the nonuse of the water is to comply with the provisions of a ground water management plan approved by the director of the department of water resources pursuant to section 42-233a or 42-233b, Idaho Code.

(5) A water right shall not be lost or forfeited by a failure of the owner of the right to divert and apply the water to beneficial use while the water right is placed in the water supply bank or is retained in or rented from the water supply bank pursuant to sections 42-1761 through 42-1765A, Idaho Code, or while the water right is leased pursuant to sections 43-335 through 43-342, Idaho Code, or sections 42-2501 through 42-2509, Idaho Code, or while use of the water is made under any other provision of law authorizing the rental or lease of water rights.

(6) No portion of any water right shall be lost or forfeited for nonuse if the nonuse results from circumstances over which the water right owner has no control. Whether the water right owner has control over nonuse of water shall be determined on a case-by-case basis.

(7) No portion of a water right held by an irrigation district, a Carey Act operating company, or any other company, corporation, association, or entity which holds water rights for distribution to its landowners, shareholders or members shall be lost or forfeited due to nonuse by such landowners, shareholders or members, unless the nonuse is subject to the control of such entity.

(8) No portion of a water right held by an irrigation district shall be lost, forfeited or subject to forfeiture as a result of the exclusion of land from the

district pursuant to chapter 11, title 43, Idaho Code, so long as any five (5) year period of nonuse following the exclusion does not result from circumstances over which the district has control.

(9) No portion of any water right shall be lost or forfeited for nonuse if the nonuse results from a water conservation practice, which maintains the full beneficial use authorized by the water right, as defined in section 42-250, Idaho Code.

(10) No portion of any water right shall be lost or forfeited for nonuse if the nonuse results from the water right being used for mitigation purposes approved by the director of the department of water resources including as a condition of approval for a new water right appropriation approved pursuant to section 42-203A, Idaho Code, a water right transfer approved pursuant to section 42-222, Idaho Code, a water exchange approved pursuant to section 42-240, Idaho Code, or a mitigation plan approved in accordance with rules promulgated pursuant to section 42-603, Idaho Code.

(11) No portion of any water right with a beneficial use related to mining, mineral processing or milling shall be lost or forfeited for nonuse, so long as the nonuse results from a closure, suspension or reduced production of the mine, processing facility or mill due in whole or in part to mineral prices, if the mining property has a valuable mineral, as defined in section 47-1205, Idaho Code, and the water right owner has maintained the property and mineral rights for potential future mineral production.

**History.**  
I.C., § 42-223, as added by 2000, ch. 85, § 3, p. 181; am. 2002, ch. 343, § 1, p. 961; am. 2003, ch. 166, § 1, p. 470; am. 2004, ch. 178, § 1, p. 560; am. 2008, ch. 239, § 1, p. 719.  
**Compiler's Notes.** The 2008 amendment, by ch. 239, added subsection (11).  
Section 2 of S.L. 2008, ch. 239 declared an emergency. Approved March 25, 2008. Section 2 of S.L. 2008, ch. 239 further provided that

this act shall apply to all existing water rights, but shall not be applied to revive any water right that has been finally determined to be forfeited prior to the date of passage and approval of this act.  
**Idaho Law Review.** Why Does Idaho's Water Law Regime Provide for Forfeiture of Water Rights?, Peter R. Anderson and Aaron J. Kraft. 48 Idaho L. Rev. 419 (2012).

**42-226. Ground waters are public waters.**

ANALYSIS

Applicability.  
Prior appropriation rights.

**Applicability.**  
Administration of an irrigation district's water right is subject to the provisions of the 1951 Idaho ground water act, §§ 42-226 to 42-239. In re Delivery Call of A&B Irrigation Dist., — Idaho —, 284 P.3d 225 (2012).

**Prior Appropriation Rights.**  
There is nothing in the language of this section that purports to permit a junior ground water appropriator to cause material injury to the water rights of a senior appropriator as long as the junior appropriator is maintaining a reasonable pumping level. Clear Springs Foods, Inc. v. Spackman, 150 Idaho 790, 252 P.3d 71 (2011).

**42-229. Methods of appropriation.**

**Ground Water Right.**  
Unless a ground water right is specifically excepted from the requirements of this section, it is subject to the provisions of the 1951

Idaho ground water act, §§ 42-226 to 42-239. In re Delivery Call of A&B Irrigation Dist., — Idaho —, 284 P.3d 225 (2012).  
**Idaho Law Review.** Why Does Idaho's

Water Law Regime Provide for Forfeiture of Water Rights?, Peter R. Anderson and Aaron J. Kraft. 48 Idaho L. Rev. 419 (2012).

## 42-230. Definitions.

**Cited in:** A & B Irrigation Dist. v. (In re SRBA Case No. 39576), 141 Idaho 746, Aberdeen-American Falls Ground Water Dist. 118 P.3d 78 (2005).

**42-233. Low temperature geothermal resource.** — (1) The right to the use of low temperature geothermal resources of this state shall be acquired by appropriation, except as provided in subsection (2) of this section. The appropriation may be perfected by means of the application, permit and license procedure as provided in this chapter for ground water, provided that low temperature geothermal resources shall be utilized primarily for heat value and secondarily for the value as water. Usage of a low temperature geothermal resource primarily for reasons other than heat value is not a beneficial use of the resource, unless the director of the department of water resources exempts the proposed use. The director may exempt a proposed use if the director finds that the proposed use satisfies the following criteria: (i) there is no feasible alternative use of the resource; (ii) there is no economically viable source of water having a bottom hole temperature of eighty-five (85) degrees or less in a well available; and (iii) the exemption is in the public interest.

(2) The use of low temperature geothermal resources for the development and operation of oil and gas wells permitted under section 47-320, Idaho Code, shall not be subject to the provisions of this chapter. However, the director of the department of water resources may initiate a contested case in accordance with the provisions of chapter 52, title 67, Idaho Code, and the rules of procedure promulgated by the department, if the department has reason to believe that an oil and gas well will cause, is causing or has caused, significant negative impacts to pressure, temperature, quality necessary for beneficial use or quantity of water available to water rights existing at the time of the development of the oil and gas well or to a water resource that can be beneficially used. The evidence of causation must come from the department or be credible information from a water right or a geothermal resource permit holder existing at the time of the development of the oil and gas well. It shall be the burden of the entity operating the oil and gas well to establish that it will not cause, is not causing and has not caused significant negative impacts to pressure, temperature, quality necessary for beneficial use or quantity of water available to existing water rights existing at the time of the development of the oil and gas well or to a water resource that can be beneficially used. If the director determines that the well will cause, is causing or has caused significant negative impacts to pressure, temperature, quality necessary for beneficial use or quantity of water available to a water right existing at the time of the development of the oil and gas well or to a water resource that can be beneficially used, the director may order the operator to take measures to mitigate those impacts.

(3) Any owner of a well who engages in the drilling, redrilling, modifying or deepening of any low temperature geothermal well shall file with the



director of the department of water resources a surety bond or cash bond in the penal sum of not less than five thousand dollars (\$5,000) or more than twenty thousand dollars (\$20,000) as determined by the director of the department of water resources based on the temperature, depth and pressure of the resource, the size and depth of the well, and any other relevant factors. The surety or cash bond shall be conditioned upon the proper compliance with the provisions of this chapter and chapter 40, title 42, Idaho Code, and rules and regulations promulgated pursuant thereto. The bond shall remain in effect for one (1) year following completion of drilling, redrilling, modifying or deepening of the well or until released in writing by the director, whichever occurs first.

(4) All permits, licenses, decreed rights and valid claims to a right to the use of ground water which would be classified as a low temperature geothermal resource having a priority date prior to July 1, 1987, remain valid and the bond provisions of subsection (3) of this section are not applicable unless the well from which the right diverts water is modified or deepened. The provisions of this section shall not be applicable to all permits, licenses and rights to the use of geothermal resources as defined in chapter 40, title 42, Idaho Code, which would be classified as a low temperature geothermal resource under this section, issued or proclaimed prior to July 1, 1987, and the bond provisions of subsection (3) of this section are not applicable to such wells.

#### History.

I.C., § 42-233, as added by 1987, ch. 347, § 3, p. 741; am. 1988, ch. 311, § 1, p. 967; am. 2012, ch. 111, § 4, p. 302.

**Compiler's Notes.** The 2012 amendment, by ch. 111, inserted "except as provided in

subsection (2) of this section" at the end of the first sentence in subsection (1); added subsection (2); and redesignated former subsections (2) and (3) as present subsections (3) and (4).

Section 7 of S.L. 2012, ch. 111 declared an emergency. Approved March 23, 2012.

**42-234. Ground water recharge — Authority of department to grant permits and licenses.** — (1) It is the policy of the state of Idaho to promote and encourage the optimum development and augmentation of the water resources of this state. The legislature deems it essential, therefore, that water projects designed to advance this policy be given maximum support. The legislature finds that the use of water to recharge ground water basins in accordance with Idaho law and the state water plan may enhance the full realization of our water resource potential by furthering water conservation and increasing the water available for beneficial use.

(2) The legislature hereby declares that the appropriation of water for purposes of ground water recharge shall constitute a beneficial use of water. The director of the department of water resources is authorized to issue permits and licenses for the purpose of ground water recharge, pursuant to the provisions of this chapter and in compliance with other applicable Idaho law and the state water plan.

(3) The director of the department of water resources may regulate the amount of water which may be diverted for recharge purposes and may reduce such amount, even though there is sufficient water to supply the entire amount originally authorized by permit or license. To facilitate necessary financing of an aquifer recharge project, the director may fix a



term of years in the permit or license during which the amount of water authorized to be diverted shall not be reduced by the director under the provisions of this subsection.

(4) To ensure that other water rights are not injured by the operations of an aquifer recharge project, the director of the department of water resources shall have the authority to approve, disapprove or require alterations in the methods employed to achieve ground water recharge. In the event that the director determines that the methods of operation are adversely affecting existing water rights or are creating conditions adverse to the beneficial use of water under existing water rights, the director shall order the cessation of operations until such alterations as may be ordered by the director have been accomplished or such adverse effects otherwise have been corrected.

(5) The legislature further recognizes that incidental ground water recharge benefits are often obtained from the diversion and use of water for various beneficial purposes. However, such incidental recharge may not be used as the basis for claim of a separate or expanded water right. Incidental recharge of aquifers which occurs as a result of water diversion and use that does not exceed the vested water right of water right holders is in the public interest. The values of such incidental recharge shall be considered in the management of the state's water resources.

#### **History.**

I.C., § 42-234, as added by 1978, ch. 366, § 1, p. 955; am. 1994, ch. 433, § 1, p. 1397; am. 2009, ch. 242, § 1, p. 743.

**Compiler's Notes.** The 2009 amendment, by ch. 242, substituted the present section heading for "Ground water recharge projects — Authority of department to grant permits"; in subsection (1), substituted "use of water" for "projects" and "ground water basins in accordance with Idaho law and the state water plan may enhance" for "ground water basins in Idaho, may enhance"; added subsections (3) and (4) and redesignated former subsection (3) as subsection (5), and rewrote subsection (2) to the extent that a detailed comparison is impracticable.

#### **Opinions of Attorney General.**

The plain terms of the Swan Falls Agreement, as well as the facts and circumstances surrounding the agreement, conclusively demonstrate the parties' intent that the hydropower water rights held in trust by the state would be subordinated to all beneficial upstream uses approved in accordance with state law, including aquifer recharge. The Swan Falls Agreement and implementing legislation also demonstrate that the provisions in subsection (2) of this section and § 42-234(2) regarding the agreement only created an incidental benefit in favor of Idaho Power and did not give rise to any vested rights or priorities. OAG 06-2.

### **42-237a. Powers of the director of the department of water resources.**

#### **Well Water.**

This section provides that well water cannot be used to fill a ground water right if doing so would either (a) cause material injury to any prior surface or ground water

right or (b) result in withdrawals from the aquifer exceeding recharge. *Clear Springs Foods, Inc. v. Spackman*, 150 Idaho 790, 252 P.3d 71 (2011).

### **42-243. Filing of claims of rights established by diversion and use — Form and content of claim.**

**Cited in:** *A & B Irrigation Dist. v. Aberdeen-American Falls Ground Water Dist.* (In re SRBA Case No. 39576), 141 Idaho 746, 118 P.3d 78 (2005).

**42-248. Notification of change in ownership of a water right or change of address of a water right owner — Notice of action affecting a water right.** — (1) All persons owning or claiming ownership of a right to use the water of this state, whether the right is represented by decree of the court, by claim to a water right filed with the department of water resources or by permit or license issued by the director of the department of water resources, shall provide notice to the department of water resources of any change in ownership of any part of the water right or of any change in the owner's mailing address, either of which occurs after June 30, 2000. Notice shall be provided within one hundred twenty (120) days of any change using forms acceptable to the director. Any notice received by the department of water resources more than one hundred twenty (120) days after the change in ownership or mailing address has occurred shall be accompanied by a late filing fee. The late filing fee shall be one hundred dollars (\$100). The director may waive the late filing fee or a portion thereof for good cause.

(2) All persons owning or claiming ownership of a right to use the water of this state that is evidenced by a water right recorded with the department of water resources prior to June 30, 2000, and for which a claim to water right, with current ownership and mailing address, is not on file with the department of water resources in the Snake River Basin Adjudication, Twin Falls Civil Case No. 39576, shall verify with the department that the ownership and mailing address information in the department's records is correct. Any incorrect ownership or mailing address shall be corrected by the owner or claimant of the water right by July 1, 2002, using forms acceptable to the director. Any mailing address or ownership corrections required by this subsection received by the department of water resources after July 1, 2002, shall be subject to the late filing fee described in subsection (1) of this section. The director may waive the late filing fee or a portion thereof for good cause.

(3) The director of the department of water resources will be deemed to have provided notice concerning any action by the director affecting a water right or claim if a notice of the action is mailed to the address and owner of the water right shown in the records of the department of water resources at the time of mailing the notice.

(4) Compliance with section 42-1409(6), Idaho Code, shall be deemed to be compliance with this section. The filing of an application to change a water right under the provisions of section 42-211 or section 42-222, Idaho Code, showing a change in address of the owner of the right or accompanied by evidence documenting any change in ownership of the water right, shall be deemed compliance with this section. The fee requirements of this section shall apply in addition to the filing fee that may be required in connection with an application to change a water right under the provisions of section 42-211 or 42-222, Idaho Code.

(5) A filing fee of twenty-five dollars (\$25.00) per right shall accompany a notice of change of ownership of a water right, provided that the fee shall be one hundred dollars (\$100) per right if a request is made to change the department's records to reflect a division in the ownership of the water right

resulting from a division in the ownership of the place of use under the water right. A notice of change of ownership of all or part of a water right shall be accompanied by evidence showing the basis for the change in ownership, and how the right is divided if the change divides the right among multiple owners.

(6) Any person having a security interest in a water right and desiring to be notified by the department regarding the filing of a change in ownership of that water right or of any proposed or final action to amend, transfer or otherwise modify that water right shall make the request upon a form provided by the department accompanied by a fee of twenty-five dollars (\$25.00) per right. The request shall be accompanied by evidence of the security interest including the expiration date of the security interest or other date defining the end of the period for which notification is requested. The request for notification shall expire at the end of the requested notification period unless renewed on a form provided by the department and accompanied by a renewal fee of twenty-five dollars (\$25.00) per right. The holder of a security interest requesting notification under this subsection shall provide notice to the department within sixty (60) days if the security interest is terminated prior to the end of the requested notification period.

**History.**  
I.C., § 42-248, as added by 1996, ch. 149, § 1, p. 487; am. 2000, ch. 313, § 1, p. 1052; am. 2011, ch. 172, § 2, p. 491.

**Compiler's Notes.** The 2011 amendment,

by ch. 172, in subsection (4), substituted "or accompanied by evidence" for "and accompanied by evidence" in the second sentence and added the last sentence.

CHAPTER 5

APPROPRIATIONS BY BUREAU OF LAND MANAGEMENT OF UNITED STATES  
DEPARTMENT OF INTERIOR

42-501. Appropriation by United States bureau of land management, department of interior — Fee — Conditions of permit — Flow.

**Constitutional Use Water Right.**  
Trial court properly determined that United States had not asserted its water rights under the constitutional method of appropriation because, under that method the United States, as the claimant, was required to put the water to beneficial use, which it had failed to do. On the other hand, a livestock

company had established its rights to the instream water because the company's predecessors, by watering their stock, had put the water to beneficial use. *Joyce Livestock Co. v. United States* (In re SREBA Case No. 39576), 144 Idaho 1, 156 P.3d 502, cert. denied, 552 U.S. 990, 128 S. Ct. 487, 169 L. Ed. 2d 339 (2007).

CHAPTER 6

DISTRIBUTION OF WATER AMONG APPROPRIATORS

SECTION.  
42-605. District meetings — Watermaster and assistants — Election — Removal — Oath and bond — Advisory committee.  
42-608. Watermaster's term of service.

SECTION.  
42-615. Proposed budget for succeeding year.  
42-619. Alternate plan for payment of district expenses.  
42-620. Additional water district expenses relating to costs of the depart-



ment of water resources for  
administration of water rights

on the eastern snake river  
plain. [Repealed.]

**42-603. Supervision of water distribution — Rules and regulations.**

**Administrative Rules.**

To the extent that the district court engaged in an “as applied” analysis of the Rules for Conjunctive Management of Surface and Ground Water Resources (CM Rules), it was in error, as administrative remedies had not been exhausted. *Am. Falls Reservoir Dist. No. 2 v. Idaho Dep’t of Water Res.*, 143 Idaho 862, 154 P.3d 433 (2007).

As the Rules for Conjunctive Management of Surface and Ground Water Resources (CM

Rules) specifically incorporated Idaho law, the failure to recite certain burdens and evidentiary standards, set specific timelines and set objective standards did not make them facially unconstitutional. The CM Rules also survive a facial challenge in the recognition given to partial decrees and in the treatment of carryover water. *Am. Falls Reservoir Dist. No. 2 v. Idaho Dep’t of Water Res.*, 143 Idaho 862, 154 P.3d 433 (2007).

**42-605. District meetings — Watermaster and assistants — Election — Removal — Oath and bond — Advisory committee. —**

(1) There shall be held on the first Monday in March in each year, and, except as provided in subsection (2) of this section, commencing at two o’clock P.M., a meeting of all persons owning or having the use of a water right, in the waters of the stream or water supply comprising such district, which right has been adjudicated or decreed by the court or is represented by valid permit or license issued by the department of water resources.

(2) Such meeting shall be held at some place within the water district, or at some nearby location convenient to a majority of those entitled to vote thereat, which place shall be designated by the director of the department of water resources. The director shall, at least twenty-one (21) days prior to the meeting date, send notification by regular mail to all persons, companies or corporations known by the director to hold rights to the use of the waters of such district, which right has been adjudicated or decreed by the court or is represented by valid permit or license issued by the department of water resources, of the time, date, location and purpose of the annual meeting. At any annual meeting the water users may vote to waive the requirement for notice by mail and provide for notice to be given for future meetings by publication of the time, date, location and purpose of the meeting in a newspaper or newspapers in general circulation in the district. Published notice shall be made once per week for two (2) consecutive weeks with the second notice appearing at least fourteen (14) and not more than thirty (30) days prior to the meeting. In water districts whose area includes land in more than four (4) counties the annual meeting shall commence at ten o’clock A.M. instead of two o’clock P.M.: provided, that the water users of any water district may, by resolution adopted at an annual meeting or at a special meeting properly called for that purpose, change the time of day when the meeting shall commence or change the date for annual meetings in subsequent years to any day except Saturday and Sunday between the second Monday of January and the third Monday in March or change both the time and the date, in which case the director of the department of water resources shall send notification at least twenty-one (21) days prior to said meeting date. At an annual meeting the water users may adopt resolutions to assure or improve the distribution of the waters of the district within



state law, and may provide that such resolutions shall continue from year to year.

(3) At the meeting of the water users of a district there shall be elected a watermaster for such water district, who may be authorized to employ such other regular assistants as the water users shall deem necessary, and who, upon appointment by the director of the department of water resources, shall be responsible for distribution of water within said water district. Notwithstanding any personnel classification assigned to the watermaster and assistants pursuant to the provisions of chapter 53, title 67, Idaho Code, the water users shall, prior to the election of such watermaster and approval of the employment of assistants, fix the compensation to be paid them during the time actually engaged in the performance of their duties.

(4) Voting shall be by majority vote of the water users present at the meeting unless one (1) or more water users requests voting using the procedure which follows in this subsection. In such case the meeting chairman shall appoint a credentials committee to determine the number of votes each water user present is authorized to cast. If requested, each person present, owning or having the use for the ensuing season of any water right in the stream or water supply comprising such water district, which right has been adjudicated or decreed by the court or is represented by valid permit or license issued by the department of water resources, shall be entitled to a number of votes equal to the average annual dollar amount and any fraction thereof assessed for that person's qualifying water right for the previous five (5) years, or such lesser number of years as the right has been assessed. If a right has not previously been assessed, a person present, owning or having the use of the right for the ensuing season shall be entitled to a number of votes equal to the dollar amount and any fraction thereof which the right would have been assessed had it existed and been reasonably used when water was available under the priority of the right during the previous season.

(5) At such meeting the water users shall choose a meeting chairman and meeting secretary and shall determine the manner and method of electing the watermaster. The water users shall, at the annual meeting, provide for the water district treasurer functions in accordance with section 42-619, Idaho Code. Within five (5) days after such meeting the meeting chairman and meeting secretary shall forward a certified copy of the minutes of such meeting to the department of water resources. The meeting chairman, or the meeting secretary, if the meeting chairman is not present, from the immediately preceding annual meeting shall call the meeting to order and preside over the election of officers for the meeting.

(6) At such meeting the water users may choose an advisory committee to be composed of members selected as may be determined at the meeting, which committee shall serve as advisors to the director and the watermaster in matters pertaining to the distribution of water within the district. The advisory committee may be authorized to carry out policies as set forth in resolutions duly adopted by the water users at the annual meeting or at a special meeting. The advisory committee may also serve as the local committee to facilitate the rental of stored water if appointed by the water

resource board for such purpose under the provisions of section 42-1765, Idaho Code.

(7) A corporation or a water delivery organization, including, but not limited to a corporation, a water company, an irrigation district, an irrigation company or a canal company, shall be considered a person for the purpose of this section and shall cast its vote by someone to be designated by the corporation.

(8) Should said meeting not be held, or should said watermaster not be elected or the watermaster's compensation not be fixed as above provided, then the director of the department of water resources is authorized to appoint a watermaster and fix the watermaster's compensation.

(9) The director of the department of water resources may remove any watermaster whenever such watermaster fails to perform the watermaster's duty, upon complaint in that respect being made to the director in writing, by one (1) person owning or having the right to the use of a water right in such district, which right has been adjudicated or decreed by the court or is represented by valid permit or license issued by the department of water resources provided, that upon investigation the director, after a hearing with the other water users of said district, which shall be held in the district or at some location convenient to the water users of the district, finds such charge to be true, and the director may appoint a successor for the unexpired term.

(10) Before entering upon the duties of the watermaster's office, said watermaster shall take and subscribe to an oath before some officer authorized by the laws of the state to administer oaths, to faithfully perform the duties of the watermaster's office, as provided in section 42-607, Idaho Code, and shall file that oath with the department of water resources. Upon appointment by the director of the department of water resources, the actions taken by a watermaster in fulfillment of the duties of his office are covered by the state group surety bond as provided by sections 59-801 through 59-804, Idaho Code. A duly appointed watermaster that is reelected in consecutive years shall not be required to take and file additional oaths with the department of water resources for each consecutive year the watermaster is reelected. If a duly elected or appointed watermaster resigns, dies or is physically unable to perform his duties during the remainder of the elected or appointed watermaster term of service, then the director of the department of water resources is authorized to appoint a successor for the unexpired term as provided in paragraphs (a) and (b) of this subsection.

(a) If a water district advisory committee has been chosen as provided in subsection (6) of this section, the water district advisory committee shall meet to either nominate a successor watermaster or request a special meeting as provided in subsection (11) of this section to elect a new watermaster. Upon receipt of a nomination from a majority of the members of the water district advisory committee, the director of the department of water resources is authorized to appoint the nominated successor watermaster for the unexpired term.

(b) If a water district advisory committee has not been chosen, the director of the department of water resources is authorized to appoint a



temporary successor watermaster. The temporary appointment extends through the unexpired term unless a special meeting is requested as provided in subsection (11) of this section and water users elect a new watermaster.

(11) The director shall call a special meeting of the water users of a district upon receipt of a written request for such meeting from a majority of the members of the advisory committee for a district, a written request from water users representing thirty percent (30%) or more of the votes cast at the last regular annual meeting, a written request from the watermaster or on the director's own motion if the director determines a meeting is necessary to address matters that cannot be delayed until the next regular annual meeting. Notice of the time, place and purpose of the special meeting shall be given by the director in the manner provided in subsection (2) of this section, provided however, that a special meeting notice shall be sent at least fourteen (14) days prior to the meeting date.

(12) The water users may, by resolution, authorize the watermaster to acquire, hold and dispose of such real and personal property, equipment and facilities in the name of the water district as necessary for the proper distribution of water and shall provide that all such real and personal property shall remain in the custody of the watermaster and the watermaster's successor.

#### History.

1903, § 24, p. 223; reen. R.C., § 3275; am. 1909, § 1, p. 326; am. 1915, ch. 34, § 10, p. 103; C.L., § 3275; C.S., § 5609; am. 1925, ch. 60, § 1, p. 86; am. 1931, ch. 94, § 1, p. 160; I.C.A., § 41-505; am. 1947, ch. 9, § 1, p. 9; am. 1969, ch. 305, § 1, p. 913; am. 1973, ch. 262, § 1, p. 534; am. 1982, ch. 14, § 1, p. 18; am. 1984, ch. 175, § 1, p. 420; am. 1987, ch. 112, § 1, p. 225; am. 1988, ch. 31, § 1, p. 38; am. 1991, ch. 101, § 1, p. 225; am. 1992, ch. 339, § 6, p. 1014; am. 2006, ch. 146, § 1, p. 458; am. 2011, ch. 176, § 1, p. 498; am. 2013, ch. 42, § 1, p. 87; am. 2013, ch. 327, § 1, p. 856.

**Compiler's Notes.** The 2006 amendment, by ch. 146, in subsection (2), substituted "at least twenty-one (21) days prior to the meeting date, send notification" for "between January first and February first of each year, notify", substituted "fourteen (14)" for "thirty (30)" and "thirty (30)" for "sixty (60)" in the fourth sentence, and substituted "twenty-one (21)" for "thirty (30)" in the fifth sentence; and

in subsection (11), substituted "subsection (2) of this section, provided however, that a special meeting notice shall be sent at least fourteen (14) days prior to the meeting date" for "section 42-605(2), Idaho Code" at the end.

The 2011 amendment, by ch. 176, in subsection (10), inserted "to" following "and subscribe" in the first sentence and added the last sentence.

This section was amended by two 2013 acts which appear to be compatible and have been compiled together.

The 2013 amendment, by ch. 42, in subsection (10), added the last sentence in the introductory paragraph and added paragraphs (a) and (b).

The 2013 amendment, by ch. 327, in subsection (3), split the subsection into two sentences, inserting "Notwithstanding any personnel classification assigned to the watermaster and assistants pursuant to the provisions of chapter 53, title 67, Idaho Code" at the beginning of the second.

**42-608. Watermaster's term of service.** — (1) The director of the department of water resources, upon receipt of a certified copy of the meeting minutes and the oath of the watermaster as provided for in section 42-605, Idaho Code, shall appoint the watermaster to a term of service throughout the year, extending until the annual meeting for the ensuing year, or until a successor is appointed. A full-year appointment of the watermaster by the director shall have no effect on the watermaster's



compensation fixed by the water users at the annual water district meeting as provided for in section 42-605, Idaho Code.

(2) A watermaster shall not begin work for the distribution and control of water required under section 42-607, Idaho Code, until called upon by one (1) or more owners or managers of ditches or persons controlling ditches or other diversion facilities in the district stating that there is a necessity for the distribution and control of the waters of the district. In the absence of a call by one (1) or more water users, the watermaster may be called upon to assume the watermaster's duties at any time the department of water resources finds that there is a necessity for the distribution and control of the waters of the district.

(3) The watermaster shall not continue performing services for the distribution and control of water after the necessity shall cease, which shall be determined by the department of water resources, and which shall not be after the first of November of each year, unless determined necessary by the department of water resources, or is otherwise provided by a resolution adopted at the annual water users' meeting for the water district, or upon receipt of a petition requesting an extension of the watermaster's services for the distribution and control of water in any year from the holder of a water right authorizing the diversion or storage of water during the time period for which the extension is sought and upon a determination of necessity for the diversion or storage of water. Payment for watermaster services during the extension shall be the responsibility of the holders of water rights delivered by the watermaster during the extension. For the purpose of determining voting rights at a water district meeting, amounts paid for watermaster services pursuant to this subsection shall be included in the calculation of annual assessment amounts and assessment rates under sections 42-605 and 42-605A, Idaho Code.

(4) At any annual meeting the water users may, by resolution, provide that the watermaster shall serve throughout the year, or for a set term during each year, for purposes of distribution and control as provided in section 42-607, Idaho Code.

**History.**

1903, p. 223, § 27; reen. R.C., § 3278; am. 1909, p. 326, § 1; am. 1915, ch. 34, § 13, p. 103; reen. C.L., § 3278; C.S., § 5612; am. 1927, ch. 63, § 3, p. 78; I.C.A., § 41-508; am. 1939, ch. 199, § 1, p. 378; am. 1991, ch. 101,

§ 3, p. 225; am. 1992, ch. 339, § 10, p. 1014; am. 2011, ch. 176, § 2, p. 498.

**Compiler's Notes.** The 2011 amendment, by ch. 176, rewrote the section to the extent that a detailed comparison is impracticable.

**42-615. Proposed budget for succeeding year.** — Each watermaster shall, at least fourteen (14) days prior to the annual meeting of the water users of the water district, also prepare a proposed budget for the succeeding year, together with a distribution of the amount of the budget to the respective water users, using the actual deliveries for the past irrigation season or seasons, as the basis for distribution. The proposed budget and distribution shall be submitted to the water users for consideration and approval at the next annual water meeting.

**History.**

C.S., § 5615-A, 5th par., as added by 1927, ch. 39, § 1, p. 51; I.C.A., § 41-515; am. 1992, ch. 339, § 17, p. 1014; am. 2011, ch. 176, § 3, p. 498.

**Compiler's Notes.** The 2011 amendment,

by ch. 176, divided the section into two sentences; and, in the first sentence, substituted "fourteen (14) days" for "thirty (30) days" and deleted "and file with the department of water resources" following "also prepare."

**42-619. Alternate plan for payment of district expenses. —**

(1) The county commissioners of any county having determined that providing the service of payment of water district expenses by the county treasurer from water district funds pursuant to section 42-613, Idaho Code, is an undue burden upon the county and shall no longer be provided, shall notify the director of the department of water resources of this action by December 1 in the year preceding the year for which the action shall first be effective by providing to the director a certified copy of the resolution of the commissioners taking such action.

(2) Notice of the action of the county commissioners shall be given to the water users of the district by the department of water resources together with the notice of the annual meeting given pursuant to section 42-605, Idaho Code.

(3) At each annual meeting of a district for which the county commissioners have taken the action provided for in subsection (1) of this section, the water users shall provide for the election or appointment of a water district treasurer. If a water district treasurer is not elected at the annual meeting, and one is found to be necessary, the director of the department of water resources shall appoint a water district treasurer. The water district treasurer shall keep a complete, accurate and permanent record of all moneys received by and disbursed for and on behalf of the district. The water district treasurer shall deposit all moneys of the district in a designated depository approved at the annual meeting, and shall comply with the public depository law as contained in chapter 1, title 57, Idaho Code.

(4) Before undertaking the duties of the office, the water district treasurer shall take and subscribe to an oath before an officer authorized by the laws of the state to administer oaths, to faithfully perform the duties of the office, and shall file the oath with the director of the department of water resources. Upon issuance by the director of a certificate confirming the election or appointment of a water district treasurer, the actions taken by the water district treasurer in fulfillment of the duties of the office are covered by the state group surety bond as provided in sections 59-801 through 59-804, Idaho Code. A duly appointed treasurer that is reelected in consecutive years shall not be required to take and file additional oaths with the department of water resources for each consecutive year the treasurer is reelected.

(5) The water district treasurer shall serve until a successor is elected or appointed, and qualified. A water district treasurer may be removed from office by the director for failure to perform the duties of the office in the manner provided for removal of a watermaster as provided by section 42-605(9), Idaho Code.

(6) Compensation for the services of the water district treasurer shall be

set at the annual meeting and may be established on a fixed-sum, per diem, or voluntary basis. If a water district treasurer is appointed by the director in the absence of being elected at the annual meeting, the director shall fix the compensation to be paid, if any.

(7) With respect to any district for which the county commissioners have taken the action provided for in subsection (1) of this section, or for which the water users have taken the action provided for in subsection (10) of this section and have notified the county thereof, the county auditor shall in the time and manner provided by section 63-1202, Idaho Code, transmit to the water district treasurer of the water district a settlement of all moneys belonging to such district paid into the county treasury and apportioned to such water district on or after the second Monday of the preceding month; provided, however, that in the months of July and January the money may be transmitted no later than the 25th of the month. The treasurer of the water district shall immediately deposit the funds in the designated depository for the district.

(8) The treasurer of the water district shall only disburse moneys from the water district account upon submission of a written voucher approved by the watermaster for expenses incurred for water district purposes related to the delivery of water or by a voucher approved by the chairman of the advisory committee for activities pursuant to resolutions adopted by the water users from district funds or funds retained pursuant to section 42-613A, Idaho Code.

(9) It shall be the duty of the water district treasurer to prepare a statement of the financial affairs of the district at the end of each fiscal year and to file the statement with the director of the department of water resources. An audit of the financial affairs of the district shall be made as required in section 67-450B, Idaho Code. A certified copy of the audit shall be filed with the director of the department of water resources following the audit.

(10) In any water district for which the county commissioners have not taken the action provided for in subsection (1) of this section, the water users may at the annual meeting of the district approve a resolution authorizing the election or appointment of a water district treasurer who shall exercise all duties and responsibilities of a treasurer provided for in this section.

(11) In water districts with an annual budget of seven thousand five hundred dollars (\$7,500) or less, the water users may, by resolution adopted at the annual meeting, authorize the watermaster to serve as water district treasurer. Watermasters in water districts with annual budgets in excess of seven thousand five hundred dollars (\$7,500) shall not be authorized to act as water district treasurer.

#### **History.**

I.C., § 42-619, as added by 1989, ch. 286, § 2, p. 710; am. 1992, ch. 339, § 21, p. 1014; am. 1993, ch. 387, § 11, p. 1417; am. 1996, ch. 322, § 36, p. 1029; am. 2011, ch. 176, § 4, p. 498.

**Compiler's Notes.** The 2011 amendment,

by ch. 176, added the last sentence in subsection (4); added "as provided by section 42-605(9), Idaho Code" at the end of subsection (5); and twice substituted "seven thousand five hundred dollars (\$7,500)" for "three thousand dollars (\$3,000)" in subsection (11).



**42-620. Additional water district expenses relating to costs of the department of water resources for administration of water rights on the eastern snake river plain. [Repealed.]**

**Compiler's Notes.** This section, which comprised I.C., § 42-620, as added by 2005, ch. 363, § 1, p. 1151; am. 2007, ch. 204, § 1, p. 627, was repealed by S.L. 2008, ch. 134, § 1.

## CHAPTER 9

### DISTRIBUTION OF WATER TO CONSUMERS

**42-902. Injuring ditch or headgate — Triple damages.**

**Construction.**

Phrase "cuts any ditch or the banks thereof", as contemplated in this section, means cutting through the bank of the ditch; hence, because landowners did not cut into the irrigation district's lateral, which ran in an easement over the landowners' property, the district was not entitled to treble damages

for the landowners' interference with the easement. *Nampa & Meridian Irrigation Dist. v. Mussell*, 139 Idaho 28, 72 P.3d 868 (2003).

Because the treble damage award provided in this section is intended as a penalty, the statute must be strictly construed. *Nampa & Meridian Irrigation Dist. v. Mussell*, 139 Idaho 28, 72 P.3d 868 (2003).

**42-915. Consumer's title not affected by transfer of ditch.**

**Beneficial Use.**

Where the United States bureau of reclamation (BOR) filed water right claims against irrigation entities regarding projects developed pursuant to the Reclamation Act of 1902, any rights held by BOR were subject to rights of the beneficial users that were served by the irrigation districts because, inter alia, (1) federal law deferred to state law in determining

the rights to water in the reclamation projects, (2) the beneficial users had an interest that was stronger than mere contractual expectancy, and (3) title to the use of the water was held by the consumers or users of the water. *United States v. Pioneer Irrigation Dist.* (In re SRBA Case No. 3957), 144 Idaho 106, 157 P.3d 600 (2007).

## CHAPTER 11

### RIGHTS OF WAY

**SECTION.**

**42-1102. Owners of land — Right to right-of-way.**

**42-1102. Owners of land — Right to right-of-way.** — When any such owners or claimants to land have not sufficient length of frontage on a stream to afford the requisite fall for a ditch, canal or other conduit on their own premises for the proper irrigation thereof, or where the land proposed to be irrigated is back from the banks of such stream, and convenient facilities otherwise for the watering of said lands cannot be had, such owners or claimants are entitled to a right-of-way through the lands of others, for the purposes of irrigation. The right-of-way shall include, but is not limited to, the right to enter the land across which the right-of-way extends, for the purposes of cleaning, maintaining and repairing the ditch, canal or conduit, and to occupy such width of the land along the banks of the ditch, canal or conduit as is necessary to properly do the work of cleaning,

maintaining and repairing the ditch, canal or conduit with personnel and with such equipment as is commonly used, or is reasonably adapted, to that work. The right-of-way also includes the right to deposit on the banks of the ditch or canal the debris and other matter necessarily required to be taken from the ditch or canal to properly clean and maintain it, but no greater width of land along the banks of the canal or ditch than is absolutely necessary for such deposits shall be occupied by the removed debris or other matter. Provided, that in the making, constructing, keeping up and maintenance of such ditch, canal or conduit, through the lands of others, the person, company or corporation, proceeding under this section, and those succeeding to the interests of such person, company or corporation, must keep such ditch, canal or other conduit in good repair, and are liable to the owners or claimants of the lands crossed by such work or aqueduct for all damages occasioned by the overflow thereof, or resulting from any neglect or accident (unless the same be unavoidable) to such ditch or aqueduct.

The existence of a visible ditch, canal or conduit shall constitute notice to the owner, or any subsequent purchaser, of the underlying servient estate, that the owner of the ditch, canal or conduit has the right-of-way and incidental rights confirmed or granted by this section.

Rights-of-way provided by this section are essential for the operations of the ditches, canals and conduits. No person or entity shall cause or permit any encroachments onto the right-of-way, including public or private roads, utilities, fences, gates, pipelines, structures, or other construction or placement of objects, without the written permission of the owner of the right-of-way, in order to ensure that any such encroachments will not unreasonably or materially interfere with the use and enjoyment of the right-of-way. Encroachments of any kind placed in such right-of-way without express written permission of the owner of the right-of-way shall be removed at the expense of the person or entity causing or permitting such encroachment, upon the request of the owner of the right-of-way, in the event that any such encroachments unreasonably or materially interfere with the use and enjoyment of the right-of-way. Nothing in this section shall in any way affect the exercise of the right of eminent domain for the public purposes set forth in section 7-701, Idaho Code.

This section shall apply to ditches, canals or other conduits existing on the effective date of this act [March 12, 1996], as well as to ditches, canals or other conduits constructed after such effective date.

**History.**

1880, p. 267, § 11; R.S., § 3181; reen. R.C. & C.L., § 3300; C.S., § 5647; I.C.A., § 42-1002; am. 1996, ch. 187, § 1, p. 594; am. 2004, ch. 179, § 1, p. 561.

**Compiler's Notes.** Section 2 of S.L. 2004, ch. 179 is compiled as § 42-1208.

**Rights of Servient and Dominant Owners.**

Irrigation district does not enjoy exclusive

rights in its primary easements and rights-of-way. Rather, this section only contemplates a right-of-way for cleaning, maintaining, and repairing canals. This section provides notice to owners of land that the owner of the ditch or canal has the right-of-way, and serves to clarify what the right-of-way includes. *Pioneer Irrigation Dist. v. City of Caldwell*, — Idaho —, 288 P.3d 810 (2012).

## CHAPTER 12

## MAINTENANCE AND REPAIR OF DITCHES

## SECTION.

42-1203. Maintenance of embankments.

42-1204. Prevention of damage to others.

42-1207. Change of ditch, canal, lateral,  
drain or buried irrigation con-  
duit.

## SECTION.

42-1208. Easements or rights-of-way not  
subject to adverse possession.42-1209. Encroachments on easements and  
rights-of-way.

**42-1203. Maintenance of embankments.** — The owner or owners of any irrigating ditch, canal or conduit shall carefully keep and maintain the embankments thereof in good repair, in order to prevent the water from wasting during the irrigation season, and shall not at any time permit a greater quantity of water to be turned into said ditch, canal or conduit than the banks thereof will easily contain or than can be used for beneficial or useful purposes; it being the meaning of this section to prevent the wasting and useless discharge and running away of water. The duties referenced in this section, whether statutory or common law, require reasonable care only, and shall not be construed to impose strict liability or to otherwise enlarge the liability of the owner or owners of any irrigating ditch, canal or conduit. The owners or constructors of such ditches, canals, works or other aqueducts, while responsible for their own acts or omissions, shall not be liable for damage or injury caused by: (1) The diversion or discharge of water into a ditch, canal or conduit by a third party without the permission of the owner or owners of the ditch, canal or conduit; (2) Any other act or omission of a third party, other than an employee or agent of the owner or owners of the ditch, canal or conduit; or (3) An act of God, including fire, earthquake, storm or similar natural phenomenon. The provisions of this section shall not be construed to impair any defense that an owner or constructor of a ditch, canal, works or other aqueduct may assert in a civil action.

**History.**

1899, p. 380, § 22; reen. R.C. & C.L.,  
§ 3308; C.S., § 5656; I.C.A., § 41-1103; am.  
2012, ch. 274, § 1, p. 772.

**Compiler's Notes.** The 2012 amendment,  
by ch 274, added the last three sentences.

**42-1204. Prevention of damage to others.** — The owners or constructors of ditches, canals, works or other aqueducts, and their successors in interest, using and employing the same to convey the waters of any stream or spring, whether the said ditches, canals, works or aqueducts be upon the lands owned or claimed by them, or upon other lands, must carefully keep and maintain the same, and the embankments, flumes or other conduits, by which such waters are or may be conducted, in good repair and condition, so as not to damage or in any way injure the property or premises of others. The duties referenced in this section, whether statutory or common law, require reasonable care only, and shall not be construed to impose strict liability or to otherwise enlarge the liability of the owner or owners of any irrigating ditch, canal, works or other aqueduct. The owners or constructors of such ditches, canals, works or other aqueducts, while responsible for their own acts or omissions, shall not be liable for damage or injury caused by: (1)



The diversion or discharge of water into a ditch, canal, works or other aqueduct by a third party without the permission of the owner or owners of the ditch, canal, works or other aqueduct; (2) Any other act or omission of a third party, other than an employee or agent of the owner or owners of the ditch, canal, works or other aqueduct; or (3) An act of God, including fire, earthquake, storm or similar natural phenomenon. The provisions of this section shall not be construed to impair any defense that an owner or constructor of a ditch, canal, works or other aqueduct may assert in a civil action. The owners or constructors have the right to enter the land across which the right-of-way extends, for the purposes of cleaning, maintaining and repairing the ditch, canal or conduit, and to occupy such width of the land along the banks of the ditch, canal or conduit as is necessary to properly do the work of cleaning, maintaining and repairing the ditch, canal or conduit with personnel and with such equipment as is commonly used, or is reasonably adapted, to that work. The right-of-way also includes the right to deposit on the banks of the ditch or canal the debris and other matter necessarily required to be taken from the ditch or canal to properly clean and maintain it, but no greater width of land along the banks of the canal or ditch than is absolutely necessary for such deposits shall be occupied by the removed debris or other matter.

**History.**

1880, p. 267, § 16; R.S., § 3186; reen. R.C. & C.L., § 3309; C.S., § 5657; I.C.A., § 41-1104; am. 1996, ch. 187, § 2, p. 594; am. 2012, ch. 274, § 2, p. 772.

**Compiler's Notes.**

The 2012 amendment, by ch 274, added the second through fourth sentences.

**42-1207. Change of ditch, canal, lateral, drain or buried irrigation conduit.** — Where any ditch, canal, lateral or drain or buried irrigation conduit has heretofore been, or may hereafter be, constructed across or beneath the lands of another, the person or persons owning or controlling said land shall have the right at their own expense to change said ditch, canal, lateral or drain or buried irrigation conduit to any other part of said land, but such change must be made in such a manner as not to impede the flow of the water therein, or to otherwise injure any person or persons using or interested in such ditch, canal, lateral or drain or buried irrigation conduit. Any increased operation and maintenance shall be the responsibility of the landowner who makes the change, his heirs, executors, administrators, successors and assigns.

A landowner shall also have the right to bury the ditch, canal, lateral or drain of another in pipe on the landowner's property, provided that the pipe, installation and backfill reasonably meet standard specifications for such materials and construction, as set forth in the Idaho standards for public works construction or other standards recognized by the city or county in which the burying is to be done. The right and responsibility for operation and maintenance shall remain with the owner of the ditch, canal, lateral or drain, but the landowner, his heirs, executors, administrators, successors and assigns, shall be responsible for any increased operation and maintenance costs, including rehabilitation and replacement, unless otherwise agreed in writing with the owner.

The written permission of the owner of a ditch, canal, lateral, drain or buried irrigation conduit must first be obtained before it is changed or placed in buried pipe by the landowner.

While the owner of a ditch, canal, lateral, drain or buried irrigation conduit shall have no right to relocate it on the property of another without permission, a ditch, canal, lateral or drain owner shall have the right to place it in a buried conduit within the easement or right-of-way on the property of another in accordance with standard specifications for pipe, materials, installation and backfill, as set forth in the Idaho standards for public works construction or other standards recognized by the city or county in which the burying is to be done, and so long as the pipe and the construction is accomplished in a manner that the surface of the owner's property and the owner's use thereof is not disrupted and is restored to the condition of adjacent property as expeditiously as possible, but no longer than thirty (30) days after the completion of construction. A landowner shall have the right to direct that the conduit be relocated to a different route than the route of the ditch, canal, lateral or drain, provided that the landowner, his heirs, executors, administrators, successors and assigns, shall be responsible for any increased construction or future maintenance costs necessitated by said relocation. Maintenance of the buried conduit shall be the responsibility of the conduit owner.

#### **History.**

1907, p. 237, § 4; reen. R.C. & C.L., § 3311a; C.S., § 5660; I.C.A., § 41-1107; am. 1994, ch. 151, § 1, p. 345; am. 2002, ch. 115, § 4, p. 326; am. 2005, ch. 331, § 1, p. 1038; am. 2011, ch. 177, § 1, p. 504.

**Compiler's Notes.** Section 2 of S.L. 2005, ch. 331 is compiled as § 18-4308.

The 2011 amendment, by ch. 177, near the end of the first, second, and last paragraphs, inserted "his heirs, executors, administrators, successors and assigns"; and, in the last paragraph, deleted "agree in writing to" preceding "be responsible for" in the next-to-last sentence.

**Cited in:** Statewide Constr., Inc. v. Pietri, 150 Idaho 423, 247 P.3d 650 (2011).

#### **ANALYSIS**

Change without permission.

Compensable injuries.

Dominant estate holder.

Landowner.

Landowner's rights.

Scope.

#### **Change Without Permission.**

When a servient estate owner, acting without permission of a ditch owner, changes the course of the ditch on his property, he subjects himself to the obligation to restore the ditch to its previous condition or, alternately, to an award of damages to accomplish the same, and to an award of damages for injuries

resulting from the unauthorized interference. *Bratton v. Scott*, 150 Idaho 530, 248 P.3d 1265 (2011).

#### **Compensable Injuries.**

Although this section does not delineate the type of injuries that are compensable, increased maintenance burdens and forced rotation of use are compensable injuries. Additionally, when there are minor increases in maintenance burdens accompanied by other injuries, such as forced rotation of use, these combined injuries are also compensable injuries. *Bratton v. Scott*, 150 Idaho 530, 248 P.3d 1265 (2011).

#### **Dominant Estate Holder.**

As the holder of the ditch right, the dominant estate owner may make changes to an irrigation ditch easement, so long as the changes do not increase the burden on the servient land, even if those changes remove an incidental benefit to the servient estate holder. *Zingiber Inv., LLC v. Hagerman Highway Dist.*, 150 Idaho 675, 249 P.3d 868 (2011), overruled on other grounds, *City of Osburn v. Randel*, 152 Idaho 906, 277 P.3d 353 (2012).

This section grants a ditch owner the express right to pipe the ditch under the existing ditch easement or right-of-way. It also implicitly grants the ditch owner the right to pipe the ditch in a location off of the servient land without the servient landowner's permission, because the statute states that written permission is only required if the ditch is



relocated on the servient land. Further, piping the ditch in a location outside the servient land, and thus removing an incidental benefit along with it, is well within the rights of a dominant-estate holder. *Zingiber Inv., LLC v. Hagerman Highway Dist.*, 150 Idaho 675, 249 P.3d 868 (2011), overruled on other grounds, *City of Osburn v. Randel*, 152 Idaho 906, 277 P.3d 353 (2012).

**Landowner.**

The first paragraph of this section gives a servient-estate owner the right to move an irrigation ditch on his own property, so long as it does not injure any of the other ditch users. *Zingiber Inv., LLC v. Hagerman Highway Dist.*, 150 Idaho 675, 249 P.3d 868 (2011), overruled on other grounds, *City of Osburn v. Randel*, 152 Idaho 906, 277 P.3d 353 (2012).

**Landowner's Rights.**

A landowner is not the owner of that portion of an irrigation ditch that passes through

his land, but is simply the owner of a servient estate. The owner of a servient estate does not have any right in the easement that crosses his land, because a servient estate simply permits another's use of its land. *Zingiber Inv., LLC v. Hagerman Highway Dist.*, 150 Idaho 675, 249 P.3d 868 (2011), overruled on other grounds, *City of Osburn v. Randel*, 152 Idaho 906, 277 P.3d 353 (2012).

**Scope.**

Because a servient estate owner can neither decrease the water flow nor cause injury to the dominant estate, this section protects two distinct property rights — water rights and ditch rights; it protects a dominant estate owner from injuries relating to an impediment to water flow, as well as from any other injuries suffered by the dominant estate owner as a result of the servient estate owner's interference with the ditch. *Bratton v. Scott*, 150 Idaho 530, 248 P.3d 1265 (2011).

**42-1208. Easements or rights-of-way not subject to adverse possession.** — Easements or rights-of-way of irrigation districts, Carey act operating companies, nonprofit irrigation entities, lateral ditch associations, and drainage districts are not subject to adverse possession, and no person shall prevent free access of authorized personnel on easements or rights-of-way or construct any obstruction on easements or rights-of-way in an effort to adversely possess said easement or right-of-way.

**History.**  
I.C., § 42-1208, as added by 1981, ch. 344, § 1, p. 713; am. 2004, ch. 179, § 2, p. 561.

**Compiler's Notes.** Section 1 of S.L. 2004, ch. 179 is compiled as § 42-1102.

**42-1209. Encroachments on easements and rights-of-way.** — Easements or rights-of-way of irrigation districts, Carey act operating companies, nonprofit irrigation entities, lateral ditch associations, and drainage districts are essential for the operations of such irrigation and drainage entities. Accordingly, no person or entity shall cause or permit any encroachments onto the easements or rights-of-way, including any public or private roads, utilities, fences, gates, pipelines, structures or other construction or placement of objects, without the written permission of the irrigation district, Carey act operating company, nonprofit irrigation entity, lateral ditch association, or drainage district owning the easement or right-of-way, in order to ensure that any such encroachments will not unreasonably or materially interfere with the use and enjoyment of the easement or right-of-way. Encroachments of any kind placed in such easement or right-of-way, without such express written permission shall be removed at the expense of the person or entity causing or permitting such encroachments, upon the request of the owner of the easement or right-of-way, in the event that any such encroachments unreasonably or materially interfere with the use and enjoyment of the easement or right-of-way. Nothing in this



section shall in any way affect the exercise of the right of eminent domain for the public purposes set forth in section 7-701, Idaho Code.

**History.**  
I.C., § 42-1209, as added by 2004, ch. 179, § 3, p. 561.

ANALYSIS

Determination of interference.  
Removal.  
Review.  
Rights of possession.

**Determination of Interference.**  
An irrigation ditch owner is vested with the discretion to determine whether a proposed encroachment would result in unreasonable or material interference with the easement or right-of-way and, based on that exercise of discretion, is vested with the authority to grant or deny a requested encroachment. The ditch owner may take into account the impact of the encroachment, or encroachments, upon the use and enjoyment of the easement or right-of-way. *Pioneer Irrigation Dist. v. City of Caldwell*, — Idaho —, 288 P.3d 810 (2012).

**Removal.**  
Four conditions must be satisfied before an encroachment “shall” be removed. First, the encroachment must have been constructed after the effective date of this section. Second, the encroachment must have been constructed without permission. Third, the en-

croachment must unreasonably or materially interfere with the use and enjoyment of the easement or right-of-way. Fourth, the ditch owner must request that the party responsible for the encroachment remove it. *Pioneer Irrigation Dist. v. City of Caldwell*, — Idaho —, 288 P.3d 810 (2012).

**Review.**  
An irrigation ditch owner’s decision to request removal of encroachments, constructed without permission, or to, thereafter, remove offending encroachments shall be subject to review to determine whether a reasonable decision-making process was employed, and whether the decision was arbitrary and capricious or based upon clearly erroneous findings. *Pioneer Irrigation Dist. v. City of Caldwell*, — Idaho —, 288 P.3d 810 (2012).

**Rights of Possession.**  
Irrigation district does not enjoy exclusive rights in its primary easements and rights-of-way. Rather, § 42-1102 only contemplates a right-of-way for cleaning, maintaining, and repairing canals. That section provides notice to owners of land that the owner of the ditch or canal has the right-of-way and serves to clarify what the right-of-way includes. *Pioneer Irrigation Dist. v. City of Caldwell*, — Idaho —, 288 P.3d 810 (2012).

CHAPTER 13

LATERAL DITCH WATER USERS' ASSOCIATIONS

SECTION.

42-1310. Lateral ditches — Repairs, im-

provements and maintenance by irrigation delivery entities.

42-1301. Organization — Officers — Rules.

**Standing.**  
Idaho law grants to lateral associations the authority to direct the improvement, repair and maintenance of the lateral and distributing ditches that serve its members, and to do any and all things not in conflict with other law wherein the best interests of the associa-

tion will be furthered. As a result, even if a lateral association itself lacks an ownership interest in its members’ ditch easements, it has standing to seek injunctive relief enabling it to carry out its statutory responsibilities. *Beach Lateral Water Users Ass’n v. Harrison*, 142 Idaho 600, 130 P.3d 1138 (2006).

42-1303. Lateral ditches — Repairs, improvements, and maintenance — Assessment of costs.

**Standing.**  
Idaho law grants to lateral associations the authority to direct the improvement, repair and maintenance of the lateral and distributing ditches that serve its members, and to do

any and all things not in conflict with other law wherein the best interests of the association will be furthered. As a result, even if a lateral association itself lacks an ownership interest in its members’ ditch easements, it

has standing to seek injunctive relief enabling it to carry out its statutory responsibilities. *Beach Lateral Water Users Ass'n v. Harrison*, 142 Idaho 600, 130 P.3d 1138 (2006).

**42-1310. Lateral ditches — Repairs, improvements and maintenance by irrigation delivery entities.** — In the event that a water users' association of lateral or laterals has not been constituted on a particular lateral or distributing ditch pursuant to this chapter, any individual water user taking water from a canal or reservoir to be conveyed to their respective premises for any distance through such lateral or distributing ditch may authorize the irrigation delivery entity providing water to the lateral or ditch to perform any necessary repairs, improvements, or maintenance to the lateral or ditch. The irrigation delivery entity may agree to perform such work only if it has duly adopted a bylaw authorizing such work to be done for its individual water users, or adopts a resolution authorizing the work. In performing such work, the irrigation delivery entity shall have the same rights and privileges to enter the land across which the right-of-way extends, for the purposes of cleaning, maintaining and repairing the lateral or ditch, and to perform such work, as does the individual water user authorizing the work. By performing such work, the irrigation delivery entity does not assume ownership of the lateral or ditch, or responsibility for or incur liability for any injury to person or property caused by an act or omission of the individual water user authorizing the work, or of any other person. When such work has been authorized, the irrigation entity shall assess the individual water user for the annual cost of any necessary repairs, improvements, or maintenance performed on the lateral or ditch, in addition to the assessments that are levied for the delivery of water to the individual water user, and the same provisions shall apply with regard to delinquent assessments as in the case of assessments levied for the delivery of water. Nothing in this section shall affect the authority of a water users' association of lateral or laterals from assessing its members for work authorized under this chapter.

**History.**  
I.C., § 42-1310, as added by 2004, ch. 147,  
§ 1, p. 477.

CHAPTER 14

ADJUDICATION OF WATER RIGHTS

SECTION.	SECTION.
42-1406B. Northern Idaho water rights adjudications — Commencement.	42-1414. Fees for filing notice of claims with the director.
42-1409. Notice of claim.	42-1425. Accomplished transfers.

**42-1401. Legislative intent.**

**Cited in:** *Sagewillow, Inc. v. Idaho Dep't of Water Res.*, 138 Idaho 831, 70 P.3d 669 (2003).

**42-1406B. Northern Idaho water rights adjudications — Commencement.** — (1) Effective management of the waters of northern Idaho

requires that a comprehensive determination of the nature, extent and priority of the rights of users of surface and ground water be determined. Therefore, the director of the department of water resources is authorized to petition the district court to commence adjudications within the terms of the McCarran amendment, 43 U.S.C. section 666, of the water rights from surface water and ground water sources in northern Idaho through initiation of three (3) proceedings, provided that each petition includes a request for the deferral of the adjudication of domestic and stock water rights as defined by subsections (4) and (11) of section 42-1401A, Idaho Code, and a request that a commencement order be issued only if the court determines it is possible to defer the adjudication of domestic and stock water rights as defined by subsections (4) and (11) of section 42-1401A, Idaho Code, within the terms of the McCarran amendment. Separate petitions shall be filed for water rights adjudications for each of the following river basins, and related ground water sources whether or not hydraulically connected to a surface water source, within Idaho: the Coeur d'Alene-Spokane river basin, the Palouse river basin, and the Clark Fork-Pend Oreille river basins, which do not include basin 98. The filing of each petition shall be contingent on legislative funding approval. Each petition shall describe the boundaries of the water source or water sources to be adjudicated.

(2) The adjudication shall be brought in any district court in which any part of the water source is located or before a court of special jurisdiction for water right adjudications. Unless otherwise ordered by the supreme court, special jurisdiction for the water rights general adjudications authorized by this section shall reside in the Snake River Basin Adjudication district court of the fifth judicial district of the state of Idaho, in and for the county of Twin Falls. The clerk of the district court in which the petition is filed shall send to the supreme court a true and certified copy of the petition. The supreme court, by order, shall assign the judge to preside over the general adjudication. Venue of the general adjudication shall be determined by order or rule of the supreme court and venue of hearings under the general adjudication shall be determined by order of the presiding judge.

(3) Upon issuance of an order by the district court which authorizes the director to commence an investigation and determination of the various water rights to be adjudicated from the water source or water sources, and which defines the boundaries of the source or sources within the state to be adjudicated, the director of the department of water resources shall proceed in the manner provided under the provisions of chapter 14, title 42, Idaho Code, to the extent not inconsistent with the provisions of this section.

#### **History.**

I.C., § 42-1406B, as added by 2006, ch. 222, § 1, p. 661; am. 2008, ch. 149, § 1, p. 434; am. 2008, ch. 159, § 1, p. 456.

**Compiler's Notes.** This section was amended by two 2008 acts which appear to be compatible and have been compiled together.

The 2008 amendment, by ch. 149, in subsection (1), deleted "all" preceding "users of surface" in the first sentence, and in the

second sentence, substituted "is authorized to petition" for "shall petition" and added the proviso at the end.

The 2008 amendment, by ch. 159, in the third sentence in subsection (1), deleted "Kootenai and" preceding "Clark Fork-Pend Oreille river basins" and added "which do not include basin 98."

Section 2 of S.L. 2008, ch. 149 declared an emergency. Approved March 17, 2008.



Section 2 of S.L. 2008, ch. 159 declared an emergency retroactively to July 1, 2006 and approved March 17, 2008.

Water Law Regime Provide for Forfeiture of Water Rights?, Peter R. Anderson and Aaron J. Kraft. 48 Idaho L. Rev. 419 (2012).

**Idaho Law Review.** Why Does Idaho's

**42-1409. Notice of claim.** — (1) The director shall prepare and furnish on request a standard notice of claim form.

The notice of claim form shall include the following:

- (a) the name and address of the claimant;
- (b) the source of water;
- (c) the quantity of water claimed:
  - (i) the quantity of water claimed to be used for water rights acquired under state law shall describe the rate of diversion or, for an instream flow claim, a rate of water flow in cubic feet per second or the annual volume of diversion of water for use or storage in acre-feet per year, or both;
  - (ii) the quantity of water claimed for water rights established under federal law shall describe for each and every purpose the rate of present and future water diversion or, in the case of an instream flow claim the rate of flow in cubic feet per second or annual volume of present and future diversion in acre-feet per year or both;
- (d) the date of priority claimed:
  - (i) the date of priority claimed for water rights acquired under state law shall be from any license, permit, or decree; or if the right is not based upon a license, permit, or decree, then the date when the water was first applied to beneficial use;
  - (ii) the date of priority claimed for water rights established under federal law shall be determined in accordance with federal law;
- (e) the number thereof, if founded upon a right on file with the department; or if the right is founded upon judicial decree not on file with the department, then the title of the court and cause, number of the action and the date of entry;
- (f) the legal description of the existing point(s) of diversion; if the claim is for an instream flow, then a legal description of the beginning and ending points of the claimed instream flow;
- (g) the purpose(s) of use and the period of use:
  - (i) the purpose(s) of use for water rights acquired under state law shall describe each purpose of use and the period of the year when water is used for each purpose;
  - (ii) the purpose(s) of use for a water right established under federal law shall describe the purposes for which the water included in the claim is presently being used, if at all, and the period of the year when water is necessary for the designated purposes;
- (h) a legal description of the place of use:
  - (i) the legal description of the place of use for water rights acquired under state law shall describe the land where the water is beneficially used; if one (1) of the purposes of use is irrigation, then the number of irrigated acres within each forty (40) acre subdivision, except as provided in section 42-219, Idaho Code;

- (ii) the legal description of the place of use for a water right established under federal law shall describe the federal reservation and the existing or proposed place of use for each consumptive use;
  - (i) the dates of any changes or enlargements in use for water rights acquired under state law, including the dimension of the diversion works as originally constructed and as enlarged;
  - (j) conditions on the exercise of any water right included in any decree, license, approved transfer application or other document; and
  - (k) such remarks and other matters as are necessary for definition of the right, for clarification of any element of a right or for administration of the right by the director.
- (2) With respect to any water right for which a change was approved by the director pursuant to section 42-211 or 42-222, Idaho Code, after filing the notice of claim and prior to filing of the director's report, the claimant shall amend the notice of claim consistent with the determination of the director on the change.
- (3) Each claimant, through submission of a claim, shall solemnly swear or affirm under penalty of perjury that the statements contained in the notice of claim or amended notice of claim are true and correct.
- (4) All claimants of water rights that are included in a general adjudication shall file with the director a notice of claim for all water rights, except for those types of water rights designated in paragraphs (a) through (d) of subsection (1) of section 42-1420, Idaho Code.
- (5) Any person who fails to submit a required notice of claim shall be deemed to have been constructively served with notice of a general adjudication by publication and mailing as required by section 42-1408, Idaho Code.
- (6) Each purchaser of a water right from the water system shall inquire of the director whether a notice of claim has been filed, and if not, shall file a notice of claim in accordance with this section. All claimants and purchasers shall provide the director written notice of any change in ownership or of any change in mailing address during the pendency of a general adjudication. All purchasers shall submit some evidence of ownership along with the notice of change of ownership.
- (7) At least one hundred twenty (120) days prior to filing of the director's report with the court, the director may notify each holder of a permit or license to appropriate water from the water system, for which proof of beneficial use was filed after entry of the court's order commencing a general adjudication, to file a notice of claim within thirty (30) days of mailing of the notice. The director shall notify the holder of the permit or license by certified mail at the most recent address shown in the records of the department.
- (8) The district court or director may extend the time for filing a notice of claim.

**History.**

I.C., § 42-1409, as added by 1986, ch. 220, § 11, p. 558; am. 1994, ch. 454, § 15, p. 1443; am. 1994, ch. 455, § 1, p. 1478; am. 1997, ch.

374, § 3, p. 1192; am. 2007, ch. 187, § 1, p. 545.

**Compiler's Notes.** The 2007 amendment, by ch. 187, in subsection (3), inserted

“through submission of a claim,” substituted “solemnly swear or affirm under penalty of perjury” for “sign and verify under oath” and

substituted “contained in the notice” for “contained in a notice.”

42-1411. Report of the director.

**Cited in:** Bedke v. City of Oakley (In re SRBA), 149 Idaho 532, 237 P.3d 1 (2010).

Pocatello v. State (In re SRBA Case No. 39576), 152 Idaho 830, 275 P.3d 845 (2012).

ANALYSIS

Specificity.

Burdens of claimant.  
Specificity.

Where water rights between the United States bureau of reclamation and irrigation entities was resolved and the irrigation entities requested that each partial decree include the identity of each irrigation entity that held beneficial title to the water and the quantity of the water right owned, the request was rejected because the water rights had been administered successfully without the requested specificity. United States v. Pioneer Irrigation Dist. (In re SRBA Case No. 3957), 144 Idaho 106, 157 P.3d 600 (2007).

**Burdens of Claimant.**

In a Snake river basin adjudication, the district court did not err in accepting a master’s findings of fact, concerning two priority dates, because the city had not met its burden of proof under subsections (4) and (5) to show when the water was first applied to a beneficial use and the amount so applied. City of

42-1412. Objections — Responses to objections — Hearing before district judge — Entry of final decree.

ANALYSIS

Waiver.

Standing.  
Waiver.

In a case involving the expansion of water rights by an irrigation district, several ground water users did not waive the right to object because the act of filing a recommendation to a report from the Idaho department of water resources, rather than an objection, was sufficient. A & B Irrigation Dist. v. Aberdeen-American Falls Ground Water Dist. (In re SRBA Case No. 39576), 141 Idaho 746, 118 P.3d 78 (2005).

**Standing.**

In an action arising from water rights claims by the U.S. bureau of reclamation and certain irrigation entities, citizens had standing to challenge to the jurisdiction of the Snake River basin adjudication court. Bray v. Pioneer Irrigation Dist. (In re SRBA case No. 39576), 144 Idaho 116, 157 P.3d 610 (2007).

**42-1414. Fees for filing notice of claims with the director. —** (1) In order to provide an adequate and equitable cost-sharing formula for financing the costs of adjudicating water rights the department of water resources shall accept no notice of claim required under the provisions of section 42-1409, Idaho Code, unless such notice of claim is submitted with a filing fee based upon the fee schedule set forth below. Failure to pay the variable water use fee in accordance with the timetable provided shall be cause for the department to reject and return the notice of claim to the claimant. The fee schedule set forth below applies to adjudication proceedings commenced or enlarged on or after January 1, 1985.

- (a) Flat fee per claim filed:
  - (i) Claims for domestic and/or stock watering rights ..... \$25.00
  - (ii) Claims for all other rights ..... \$50.00
- (b) Additional variable water use fee for claims filed based upon acreage, power generating capacity, c.f.s., or equivalent volume of water:
  - (i) Irrigation use (one fee irrespective of number of claims): ..... \$1.00 per acre



- (ii) Power: ..... \$3.50 per kilowatt of capacity (manufacturer’s nameplate rating), or \$250,000, whichever is less
- (iii) Aquaculture: ..... \$10.00 per c.f.s.
- (iv) Municipal, industrial, commercial, mining, heating, cooling: ..... \$100.00 per c.f.s.
- (v) Public instream flow, public lake level maintenance, wildlife: ..... \$100.00 per c.f.s.

(c) All fees collected by the department pursuant to this section shall be placed in the water resources adjudication account established in section 42-1777, Idaho Code.

(2) If a claimant increases in an amended notice of claim the amount of water claimed, the amount of land irrigated, or the kilowatt capacity of the generating facility, the claimant shall pay upon filing the amended notice of claim an additional variable fee in accordance with the rates set forth in subsection (1) of this section. Claimants shall be entitled to a return of filing fees or late fees only where the fee was miscalculated at the time the original or amended notice of claim was filed.

(3) If a claimant files a notice of claim after the date set by the director in the notice mailed or served in accordance with subsections (2), (3), or (4) of section 42-1408, Idaho Code, or with subsection (7) of section 42-1409, Idaho Code, the claimant shall pay the fee set forth in subsection (1) of this section, and in addition, the amount of fifty dollars (\$50) or fifteen percent (15%) of the original filing fee, whichever is greater. The director may waive the late processing fee or a portion thereof for good cause.

**History.**

I.C., § 42-1414, as added by 1971, ch. 153, § 1, p. 753; am. 1972, ch. 23, § 1, p. 28; am. 1985, ch. 18, § 3, p. 27; am. 1994, ch. 454, § 22, p. 1443; am. 1994, ch. 455, § 5, p. 1478; am. 1996, ch. 186, § 4, p. 584; am. 2006, ch. 222, § 2, p. 661; am. 2008, ch. 148, § 1, p. 433.

**Compiler’s Notes.** The 2006 amendment, by ch. 222, doubled all fee amounts in subsections (1)(a) and (b); inserted “based on permit, license, decree or statutory claim” in subsection (1)(a)(i); deleted first sentence of subsection (1)(c), which read: “Payment of a variable use water fee of more than one thousand

dollars (\$1,000) may be spread out over as many as five (5) annual equal payments with ten percent (10%) interest accruing on the unpaid balance”; and substituted “one hundred dollars (\$100)” for “fifty dollars (\$50)” in subsection (3).

The 2008 amendment, by ch. 148, throughout subsections (a) and (b), reduced the fee amounts by half; in paragraph (1)(a)(i), deleted “based on permit, license, decree or statutory claim” following “watering rights”; in paragraph (b)(ii), added “or \$250,000, whichever is less”; and in subsection (3), substituted “fifty dollars (\$50)” for “one hundred dollars (\$100).”

**42-1422. Special master — Appointment — Powers and duties — Compensation — Disqualification — Review of special master’s report.**

**Cited in:** *Bedke v. City of Oakley* (In re SRBA), 149 Idaho 532, 237 P.3d 1 (2010).

**42-1425. Accomplished transfers. —** (1) Legislative findings regarding accomplished transfers and the public interest.

(a) The legislature finds and declares that prior to the commencement of the Snake River basin adjudication, and the northern Idaho adjudica-

tions, many persons entitled to the use of water or owning land to which water has been made appurtenant either by decree of the court or under provisions of the constitution and statutes of this state changed the place of use, point of diversion, nature or purpose of use, or period of use of their water rights without compliance with the transfer provisions of sections 42-108 and 42-222, Idaho Code.

(b) The legislature finds that many of these changes occurred with the knowledge of other water users and that the water has been distributed to the right as changed. The legislature further finds and declares that the continuation of the historic water use patterns resulting from these changes is in the local public interest provided no other existing water right was injured at the time of the change. Denial of a claim based solely upon a failure to comply with sections 42-108 and 42-222, Idaho Code, where no injury or enlargement exists, would cause significant undue financial impact to a claimant and the local economy. Approval of the accomplished transfer through the procedure set forth in this section avoids the harsh economic impacts that would result from a denial of the claim.

(c) The legislature further finds and declares that examination of these changes by the director through the procedures of section 42-222, Idaho Code, would be impractical and unduly burdensome. The more limited examination of these changes provided for in this section, constitutes a reasonable procedure for an expeditious review by the director while ensuring that the changes do not injure other existing water rights or constitute an enlargement of use of the original right.

(2) Any change of place of use, point of diversion, nature or purpose of use or period of use of a water right by any person entitled to use of water or owning any land to which water has been made appurtenant either by decree of the court or under the provisions of the constitution and statutes of this state, prior to November 19, 1987, the date of commencement of the Snake River basin adjudication, and prior to January 1, 2006, for the northern Idaho adjudications authorized by section 42-1406B, Idaho Code, may be claimed in the applicable general adjudication even though the person has not complied with sections 42-108 and 42-222, Idaho Code, provided no other water rights existing on the date of the change were injured and the change did not result in an enlargement of the original right. Except for the consent requirements of section 42-108, Idaho Code, all requirements of sections 42-108 and 42-222, Idaho Code, are hereby waived in accordance with the following procedures:

(a) If an objection is filed to a recommendation for accomplished change of place of use, point of diversion, nature or purpose of use or period of use, the district court shall remand the water right to the director for further hearing to determine whether the change injured a water right existing on the date of the change or constituted an enlargement of the original right. After a hearing, the director shall submit a supplemental report to the district court setting forth his findings and conclusions. If the claimant or any person who filed an objection to the accomplished transfer is aggrieved by the director's determination, they may seek review before

the district court. If the change is disallowed, the claimant shall be entitled to resume use of the original water right, provided such resumption of use will not cause injury or can be mitigated to prevent injury to existing water rights. The unapproved change shall not be deemed a forfeiture or abandonment of the original water right.

(b) This section is not applicable to any claim based upon an enlargement of use.

#### History.

I.C., § 42-1425, as added by 1994, ch. 454, § 31, p. 1443; am. 1996, ch. 186, § 7, p. 584; am. 2006, ch. 222, § 3, p. 661.

**Compiler's Notes.** The 2006 amendment, by ch. 222, in subsection (1)(a), inserted "and the northern Idaho adjudications"; in subsection (2), inserted "and prior to January 1, 2006, for the northern Idaho adjudications authorized by section 42-1406B, Idaho Code" and "applicable" preceding "general adjudication"; and, near the beginning of subsection (2)(a), substituted "recommendation" for "claim."

#### ANALYSIS

Alternate point of diversion.

Source.

#### Alternate Point of Diversion.

Although no objections were made to a city's claim that each of its wells had become an alternate point of diversion for its water rights under subsection (2), a condition requiring that the priority date and the quantity of water be specified for each well was properly imposed to protect other water users from injury to their rights. *City of Pocatello v. State* (In re SRBA Case No. 39576), 152 Idaho 830, 275 P.3d 845 (2012).

#### Source.

Source of a water right cannot be changed under subsection (2). *City of Pocatello v. State* (In re SRBA Case No. 39576), 152 Idaho 830, 275 P.3d 845 (2012).

## 42-1426. Enlargements — Waiver of mandatory permit requirements.

### Enlargement of Water Rights.

Irrigation district's request for an enlargement of water rights was properly denied under this section if the water in question was characterized as drain or waste water because amnesty was not allowed for water coming from an unappropriated source. If the water was treated as groundwater, relief was still not granted because this section required subordination to those priority rights established prior to April 12, 1994. *A & B Irrigation Dist. v. Aberdeen-American Falls Ground Water Dist.* (In re SRBA Case No. 39576), 141 Idaho 746, 118 P.3d 78 (2005).

Irrigation district did not qualify for the rebuttable presumption in § 42-1416 (repealed) because an enlargement of water rights would have caused a per se injury to the rights of a junior appropriator; therefore, the only statutory authority by which to acquire a valid water right for an enlargement was under subsection (2) of this section. *A & B Irrigation Dist. v. Aberdeen-American Falls Ground Water Dist.* (In re SRBA Case No. 39576), 141 Idaho 746, 118 P.3d 78 (2005).

## CHAPTER 15

### MINIMUM STREAM FLOW

#### SECTION.

42-1507. Snake river water rights agreement minimum stream flow water rights established.

42-1508. Wood River basin — Enhancement

of instream flows and downstream water supplies. [Repealed.]

**42-1507. Snake river water rights agreement minimum stream flow water rights established.** — (1) The legislature hereby establishes minimum stream flow water rights for the stream reaches identified by



resolution of the Idaho water resource board, adopted February 8, 2005. The elements of the minimum stream flow water rights established by this section are as defined by the board's resolution and the attachments thereto. The board shall hold the minimum stream flow water rights in trust for the people of the state of Idaho, and the board shall file claims for the rights in the Snake river basin adjudication. These minimum stream flow water rights shall have a priority date as of April 1, 2005, and shall be subordinated to future domestic, commercial, municipal, and industrial water uses and such other future uses as described in the December 17, 2004, resolution of the Idaho water resource board providing approval of the Snake River Water Rights Agreement of 2004 ("Mediator's Term Sheet" dated April 20, 2004, and submitted on that date to the SRBA Court in SRBA Consolidated Subcase 03-10022 and SRBA Consolidated Subcase 67-13701, with all appendices to the document), as approved, ratified, and confirmed by the 108th Congress of the United States in the "Snake River Water Rights Act of 2004," Pub. L. No. 108-447 (H.R. 4818), 118 Stat. 3431 to 3441 (December 8, 2004).

(2) No fee shall be required in connection with the filing of claims in the Snake river basin adjudication for the minimum stream flow water rights established by this section.

(3) Any minimum stream flow water rights established by this section that are not capable of being maintained may be satisfied and maintained through operation of the water supply bank authorized by sections 42-1761 through 42-1765, Idaho Code, inclusive, and other available methods consistent with Idaho law.

(4) In the event the state decides to change any minimum stream flow water rights created by this section, it will provide notice of such change and consult with the Nez Perce tribe on a government-to-government basis as provided in the Snake River Water Rights Agreement of 2004. Provided however, nothing herein or in the Snake River Water Rights Agreement of 2004 shall be construed or interpreted to abridge, impair or limit the authority of the state of Idaho to create, modify or terminate any minimum stream flow water right established by this section.

(5) This section shall not become effective until the governor issues a proclamation certifying that all conditions for the effectiveness of the Snake River Water Rights Agreement of 2004 have been satisfied.

**History.**

I.C., § 42-1507, as added by 2005, ch. 150, § 1, p. 466.

**Compiler's Notes.** On April 27, 2007, the governor issued a proclamation stating that the requirements of subsection (5), certification that all conditions for the effectiveness of

the Snake River Rights Agreement of 2004 have been satisfied, have been met. As of that date, the provisions of this section are operative.

Section 2 of S.L. 2005, ch. 150 declared an emergency. Approved March 24, 2005.

**42-1508. Wood River basin — Enhancement of instream flows and downstream water supplies. [Repealed.]**

Repealed by S.L. 2007, ch. 262, § 4, effective December 31, 2012.

**History.**

I.C., § 42-1508, as added by 2007, ch. 262,  
 § 1, p. 777.

**CHAPTER 17****DEPARTMENT OF WATER RESOURCES — WATER RESOURCE BOARD****SECTION.**

42-1711. Definitions.

42-1712. Construction, enlargement, alteration or repair of dams — Submission of duplicate plans, drawings and specifications.

42-1713. Fees.

42-1717. Jurisdiction over supervision of maintenance, operation and inspection of dams and mine tailings impoundment structures.

42-1737. Board approval — Criteria — Hearings — Appeals — Defining a misdemeanor — Injunctions.

42-1740. Purposes.

42-1753. Source of fund.

42-1754. Allocation of fund.

42-1756. Loans from account — Application — Investigation — Approval

**SECTION.**

— Repayment — Statement  
 — Filing — Default.

42-1763B. Interim authority for rental of water to augment flows for listed anadromous fish.

42-1765B. Wood River basin — Water rights donated to enhance instream flows and downstream water supplies — Local committee. [Repealed.]

42-1777. Water resources adjudication fund.

42-1779. Statewide comprehensive aquifer planning and management effort.

42-1780. Aquifer planning and management fund — Secondary aquifer planning, management and implementation fund.

**42-1711. Definitions.** — Unless the context otherwise requires, the following definitions govern the construction of this chapter.

(a) “Department” means the department of water resources.

(b) “Dam” means any artificial barrier, together with appurtenant works, constructed for the purpose of storing water or that stores water, which is ten (10) feet or more in height from the natural bed of the stream or watercourse at the downstream toe of the barrier, as determined by the department, or from the lowest elevation of the outside limit of the barrier, if it is not across a stream channel or watercourse, to the maximum water storage elevation, or has or will have an impounding capacity at maximum storage elevation of fifty (50) acre-feet or more. The following are not included as regulated dams or are not considered dams for the purposes of sections 42-1710 through 42-1721, Idaho Code; provided however, barriers defined in paragraphs (1) and (2), below, shall remain under the exclusive jurisdiction of the department:

(1) Barriers constructed in low risk areas as determined by the director, which are six (6) feet or less in height, regardless of storage capacity.

(2) Barriers constructed in low risk areas as determined by the director, which impound ten (10) acre-feet or less at maximum water storage elevation, regardless of height.

(3) Barriers in a canal used to raise or lower water therein or divert water therefrom.

(4) Fills or structures determined by the director to be designed primarily for highway or railroad traffic.

(5) Fills, retaining dikes or structures less than twenty (20) feet in height, which are under jurisdiction of the department of environmental quality

or the department of agriculture, determined by the director of the department of water resources to be designed primarily for retention or treatment of municipal, livestock, or domestic wastes, or sediment and wastes from produce washing or food processing plants.

(6) Levees that store water regardless of storage capacity.

(c) "Levee" means a retaining structure alongside a natural lake which has a length that is two hundred (200) times or more greater than its greatest height measured from the lowest elevation of the toe to the maximum crest elevation of the retaining structure.

(d) "Reservoir" means any basin which contains or will contain the water impounded by a dam.

(e) "Owner" includes any of the following who own, control, operate, maintain, manage, or propose to construct a dam, reservoir or mine tailings impoundment structure:

(1) The state of Idaho and its departments, agencies, institutions and political subdivisions;

(2) The United States of America and any of its departments, bureaus, agencies and institutions; provided that the United States of America shall not be required to pay any of the fees required by section 42-1713, Idaho Code, and shall submit plans, drawings and specifications as required by section 42-1712, Idaho Code, for information purposes only;

(3) Every municipal or quasi-municipal corporation;

(4) Every public utility;

(5) Every person, firm, association, organization, partnership, business trust, corporation or company;

(6) The duly authorized agents, lessees, or trustees of any of the foregoing; or

(7) Receivers or trustees appointed by any court for any of the foregoing.

(f) "Alterations," "repairs," or either of them, mean only such alterations or repairs as may directly affect the safety of the dam, reservoir or mine tailings impoundment structure, as determined by the department.

(g) "Enlargement" means any change in or addition to an existing dam, reservoir or mine tailings impoundment structure, which raises or may raise the water storage elevation of the water impounded by the dam or mine tailings slurry impounded by the mine tailings impoundment structure.

(h) "Water storage elevation" means the maximum elevation of water surface which can be obtained by the dam or reservoir.

(i) "Storage capacity" means the total storage at the maximum storage elevation.

(j) "Days" used in establishing deadlines means calendar days including Sundays and holidays.

(k) "Certificate of approval" means a certificate issued by the director for all dams or mine tailings impoundment structures listing restrictions imposed by the director, and without which no new dams shall be allowed to impound water or mine tailings impoundment structures shall be allowed to impound mine tailings slurry.

(l) "Mine tailings impoundment structure" means any artificial embankment which is or will be more than thirty (30) feet in height measured from



the lowest elevation of the toe to the maximum crest elevation constructed for the purpose of storing mine tailings slurry.

(m) "Lift construction" means mine tailings impoundment structure enlargement by raising the elevation of the structure on a continuous or recurring basis. Such practice will be considered under construction until the structure reaches its final crest elevation.

(n) "Mine tailings impoundment elevation" means the maximum elevation of stored mine tailings which can be obtained by the impounding structure.

(o) "Mine tailings slurry" means all slurry wastes from a mineral processing or mining operation.

(p) "Mine tailings storage capacity" means the total storage volume of the impounding area when filled with tailings to the maximum designed storage elevation.

#### **History.**

1969, ch. 280, § 2, p. 833; am. 1970, ch. 73, § 1, p. 187; am. 1974, ch. 20, § 12, p. 533; am. 1978, ch. 309, § 3, p. 785; am. 1987, ch. 98, § 1, p. 192; am. 1988, ch. 308, § 1, p. 963; am.

2000, ch. 78, § 2, p. 163; am. 2001, ch. 103, § 81, p. 253; am. 2004, ch. 180, § 1, p. 563.

**Compiler's Notes.** Section 3 of S.L. 2004, ch. 180 declared an emergency. Approved March 23, 2004.

### **42-1712. Construction, enlargement, alteration or repair of dams — Submission of duplicate plans, drawings and specifications. —**

Owners who shall desire to construct, or enlarge, or alter or repair, meaning only such alterations or repairs as may affect the safety of the dam or reservoir, any dam, for the purpose of storing or appropriating or diverting any of the waters of this state, when the same is to be more than twenty (20) feet in height or have a storage capacity of one hundred (100) acre-feet or more, except as otherwise in this chapter provided, shall submit duplicate plans, drawings and specifications of the proposed work to the director, and construction of a new dam or enlargement, or alteration or repairs shall not be commenced until the owner has applied for and obtained written approval of the plans, drawings and specifications.

Owners of dams under construction on the effective date of this legislation and for which plans, drawings and specifications are required but have not been approved on or before the effective date of this legislation shall submit such plans, drawings and specifications for approval, with the fee established hereinafter. The director shall give notice to owners to submit plans, drawings and specifications, and failure to submit plans, drawings and specifications for approval within thirty (30) days of the date of mailing the notice shall be punishable as provided in this act, and construction shall be stopped upon issuance of an order by the director unless for good cause shown as determined by the director further time is allowed. The notice and/or order provided for in this paragraph may be given by certified mail and a return receipt signed by the owner or responsible company shall constitute prima facie evidence of service.

Upon receipt of the plans, drawings and specifications, the director shall give consideration thereto and shall approve or disapprove the same within the time provided in this section, and if he approves them, the director shall affix his approval thereto and return one (1) copy of each such plans,

drawings and specifications, with his approval, to the party or parties proposing to construct the works.

Plans, drawings and specifications submitted to the director complete with fees shall be approved or disapproved in no more than sixty (60) days and in no less than fourteen (14) days after receipt. Defective plans, drawings and specifications made in a bona fide attempt to conform to the law and rules of the water resource board shall not be rejected but notice of defect shall be sent to the owner by certified mail. If within thirty (30) days of the date of mailing the notice the owner does not file amended and perfected plans, drawings and specifications, the plans, drawings and specifications shall be rejected and canceled unless for good cause shown the director allows the owner further time.

The construction of all dams under plans, drawings and specifications approved by the director shall be pursued with reasonable diligence to completion. In the event that an owner fails to commence actual construction and maintain reasonable construction progress of the dam under the plans, drawings and specifications approved by the director prior to or after the effective date of this act [May 26, 1969], such approval may be voided by the director one (1) year after such approval. Notice of the intent to void any such approval shall be sent by the director to the owner by certified mail and said owner shall be allowed thirty (30) days within which to show cause why such approval should not be voided. The director may grant additional time within which to commence the construction under plans, drawings and specifications approved by the director upon a showing of reasonable cause. Plans, drawings and specifications for which approval has become void must be resubmitted for approval, with the fee therefor as hereafter provided, prior to commencing construction of any such dam.

The plans, drawings and specifications shall include the following information:

- (a) The name and address of the owner.
- (b) The location, type, size and height of the proposed dam or reservoir and appurtenant works.
- (c) The storage capacity of the reservoir.
- (d) Such other pertinent information as the director may require including the following:
  - (1) Data concerning subsoil and foundation conditions and materials entering into construction of the dam or reservoir.
  - (2) Investigations of, and reports on subsurface conditions involving such matters as exploratory pits, trenches, and adits, drilling, coring, geophysical surveys, tests to determine leakage rates, and physical tests to measure in place the properties and behavior of foundation materials at the dam or reservoir site.
  - (3) Investigation of and reports on the geology of the dam or reservoir site and its vicinity, possible geological hazards, availability and quality of construction materials, and other pertinent factors.

The plans, drawings and specifications shall be of such character and size setting forth such pertinent details and dimensions and in such form as the director requires. Plans, drawings and specifications which are submitted to

the department shall be prepared by or under the direction of a registered professional engineer who is registered pursuant to Idaho law and authenticated by him as provided in section 54-1215, Idaho Code, or by such other person as provided in section 54-1223, Idaho Code.

Where said dam is, in the opinion of the director, not of sufficient importance to have the provisions of the section apply to such dam, then the director shall have power, upon written application, to suspend the provisions of this section in regard to such dam.

The director shall prepare design and construction criteria for dams and barriers not requiring departmental approval of plans, drawings and specifications and shall supply such criteria upon request to any interested person to aid in constructing such dams and barriers. The use of such criteria shall in no way relieve the owner of responsibility for adequacy of design and construction procedures, nor be the basis of liability for any city or county that grants a permit related to construction of the dam or barrier pursuant to the provisions of chapter 65, title 67, Idaho Code.

**History.**

1969, ch. 280, § 3, p. 833; am. 1974, ch. 20, § 13, p. 533; am. 2004, ch. 180, § 2, p. 563.

**Compiler's Notes.**

Section 3 of S.L. 2004, ch. 180 declared an emergency. Approved March 23, 2004.

**42-1713. Fees.** — Fees provided for in this chapter shall be required of all enumerated in the definition of owner. Fees for an enlargement to an existing dam or mine tailings impoundment structure shall be based upon the increase in storage capacity or tailings storage capacity. Fees for alterations or repairs of an existing dam or mine tailings impoundment structure shall be based on an estimate, made by the director, of costs of inspections to be made, however, in no case shall such fees exceed that which would be required by the fee schedule for construction of the dam or mine tailings impoundment structure.

The fee for construction of a dam or mine tailings impoundment structure, or for enlarging an existing dam or mine tailings impoundment structure, shall be two hundred dollars (\$200) plus the following amount:

(a) For one thousand (1,000) acre-feet capacity or less, ten dollars (\$10.00) for each ten (10) acre-feet or part thereof.

(b) For over one thousand (1,000) acre-feet capacity but not exceeding ten thousand (10,000) acre-feet capacity, one thousand dollars (\$1,000) plus one dollar (\$1.00) for each ten (10) acre-feet or part thereof over the first one thousand (1,000) acre-feet capacity.

(c) For storage in excess of ten thousand (10,000) acre-feet, one thousand nine hundred dollars (\$1,900) plus twenty cents (20¢) for each ten (10) acre-feet or part thereof over the first ten thousand (10,000) acre-feet capacity. In no case, however, shall the fee be more than six thousand dollars (\$6,000).

All plans, drawings and specifications shall not be considered by the department until the filing fee is received. All moneys received by the department under the provisions of this chapter shall be deposited in the water administration fund created under section 42-238a, Idaho Code, and



shall be available to the department in carrying out the provisions of this chapter. Fees submitted shall not be refunded.

**History.** 1978, ch. 309, § 4, p. 785; am. 1980, ch. 195, 1969, ch. 280, § 4, p. 833; am. 1970, ch. 73, § 1, p. 431; am. 2004, ch. 169, § 1, p. 548. § 2, p. 187; am. 1974, ch. 20, § 14, p. 533; am.

**42-1717. Jurisdiction over supervision of maintenance, operation and inspection of dams and mine tailings impoundment structures.** — Supervision over the maintenance and operation of dams, reservoirs and mine tailings impoundment structures insofar as necessary to safeguard life and property from injury by reason of the failure thereof is vested in the director of the department of water resources. The director shall at state expense inspect or cause to be inspected, as often as he thinks advisable, every dam used for holding water and mine tailings impoundment structure used for holding tailings slurry in this state; however, all dams or mine tailings impoundment structures regulated by the department shall be inspected at least once every five (5) years, and if after any such inspection such dam or mine tailings impoundment structure, in the opinion of the director, is unsafe, and life or property liable to be endangered by reason thereof, the director shall give written notice and order by certified mail or by personal service upon the owner or owners to remove or repair the same so as to make it safe. If such owner or owners shall neglect or refuse to remove or repair the same after notice to that effect has been given in writing by the director, the director may draw off all or part of such water from behind such dam, embankment or mine tailings slurry from behind mine tailings impoundment structure and keep said water or mine tailings slurry drawn off until such time as the orders shall be complied with. In determining whether or not a dam, reservoir or mine tailings impoundment structure or proposed dam, reservoir or mine tailings impoundment structure constitutes or would constitute a danger to life or property, the director shall take into consideration the possibility that the dam, reservoir or mine tailings impoundment structure might be endangered by overtopping, seepage, settlement, erosion, cracking, earth movement or other conditions which exist or might occur in any area in the vicinity of the dam, reservoir or mine tailings impoundment structure.

No action shall be brought against the state, the water resource board, the director, or the department of water resources or their respective agents or employees for the recovery of damages caused by the partial or total failure of any dam, reservoir or mine tailings impoundment structure or through the operation of any dam, reservoir or mine tailings impoundment structure upon the ground that such defendant is liable by virtue of any of the following:

- (a) The approval of the dam, reservoir or mine tailings impoundment structure.
- (b) The issuance or enforcement of orders relative to maintenance or operation of the dam, reservoir or mine tailings impoundment structure.
- (c) Control and regulation of the dam, reservoir or mine tailings impoundment structure.

- (d) Measures taken to protect against failure during an emergency.
- (e) The use of design and construction criteria prepared by the department.
- (f) The failure to issue or enforce orders, to control or regulate dams, or to take measures to protect against dam failure.

No action shall be brought by the state against the owner for pollution which may occur in the event that the director orders emergency dumping or bypassing.

Nothing in this part shall be construed to relieve an owner or operator of a dam, reservoir or mine tailings impoundment structure of the legal duties, obligations or liabilities incident to the ownership or operation of the dam, reservoir or mine tailings impoundment structure.

The findings and orders of the director and the certificate of approval of any dam, reservoir or mine tailings impoundment structure issued by the director are final and conclusive and binding upon all state agencies, regulatory or otherwise, as to the safety of design, construction, maintenance and operation of any dam, reservoir or mine tailings impoundment structure.

The director may require owners to keep records of, and to report on, maintenance, operation, staffing and engineering and geologic investigations, and the water resource board shall issue such rules as necessary to secure maintenance and operation and to require staffing and engineering and geologic investigations which will safeguard life and property. In addition, the owner of a dam, reservoir or mine tailings impoundment structure or his agent shall fully and promptly advise the department of any sudden or unprecedented flood or unusual or alarming circumstance or occurrence affecting the safety of the dam, reservoir or mine tailings impoundment structure. The director, from time to time, shall make inspections of dams, reservoirs and mine tailings impoundment structures at state expense for the purpose of determining their safety, but shall require owners to perform at their expense such work as necessary to disclose information sufficient to enable the director to determine conditions of dams, reservoirs, and mine tailings impoundment structures in regard to their safety and to perform at their expense other work necessary to secure maintenance and operation which will safeguard life and property.

#### **History.**

1969, ch. 280, § 8, p. 833; am. 1974, ch. 20, § 18, p. 533; am. 1978, ch. 309, § 8, p. 785;

am. 1987, ch. 225, § 1, p. 477; am. 2004, ch. 168, § 1, p. 546.

### **42-1734A. Comprehensive state water plan.**

**Eastern Snake Plain Aquifer.** Sections 1 through 5 of S.L. 2009, ch. 223 read:

"1. Pursuant to 2006 Senate Concurrent Resolution No. 136 and Section 42-1734A, Idaho Code, the Idaho Water Resource Board has prepared and adopted the Comprehensive Aquifer Management Plan for the Eastern Snake Plain Aquifer as a component of the Comprehensive State Water Plan. Pursuant

to Section 42-1734B(6), Idaho Code, the Comprehensive Aquifer Management Plan for the Eastern Snake Plain Aquifer ('ESPA CAMP') is approved as a component of the Comprehensive State Water Plan. Pursuant to Section 42-1734B(4), Idaho Code, all state agencies shall exercise their duties in a manner consistent with the ESPA CAMP.

"2. The Idaho Water Resource Board shall



prepare and submit to the Legislature for approval, a funding mechanism for implementation of Phase I of the Comprehensive Aquifer Management Plan for the Eastern Snake Plain Aquifer. The funding mechanism shall be consistent with the funding participation targets set forth in the ESPA CAMP and shall be developed with the assistance of the ESPA CAMP Implementation Committee. The Idaho Water Resource Board shall, with the assistance of the Implementation Committee, prepare and submit to the Legislature for approval any subsequent proposed changes to the ESPA CAMP. Implementation plans should seek to optimize outcomes for fish and wildlife, recreation, hydropower, municipalities, irrigation, aquaculture and other uses.

"3. Implementation of Phase I of the Comprehensive Aquifer Management Plan for the Eastern Snake Plain Aquifer is subject to legislative approval of a funding mechanism, which shall be consistent with the funding participation targets set forth in the ESPA CAMP. The act does not constitute an obligation of state funds and any state funding shall be subject to the availability of funds. State agencies may use previously appropriated funds to begin implementation of Phase I.

"4. The CAMP recognizes that incidental ground water recharge that occurs as a result

of the exercise of surface and flood irrigation water rights is an important component of the Eastern Snake Plain Aquifer water supply. The CAMP implementation plan shall include measures that recognize the benefits of incidental recharge, and that will encourage water users and canal managers to continue their historic surface water diversion practices.

"5. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval." Approved April 23, 2009.

**Compiler's Notes.** Section 1 of S.L. 2012, ch. 118 provided: "Pursuant to Sections 42-1734A [this section] and 42-1779, Idaho Code, the Idaho Water Resource Board has prepared and, by resolution dated July 29, 2011, adopted the Comprehensive Aquifer Management Plan for the Rathdrum Prairie Aquifer as a component of the Comprehensive State Water Plan. Pursuant to Section 42-1734B(6), Idaho Code, the Comprehensive Aquifer Management Plan for the Rathdrum Prairie Aquifer ("RP CAMP") is approved as a component of the Comprehensive State Water Plan, and pursuant to Section 42-1734B(4), Idaho Code, all state agencies shall exercise their duties in a manner consistent with the RP CAMP."

## **42-1734B. Board procedures for adopting a comprehensive state water plan.**

**Eastern Snake Plain Aquifer.** Sections 1 through 5 of S.L. 2009, ch. 223 read:

"1. Pursuant to 2006 Senate Concurrent Resolution No. 136 and Section 42-1734A, Idaho Code, the Idaho Water Resource Board has prepared and adopted the Comprehensive Aquifer Management Plan for the Eastern Snake Plain Aquifer as a component of the Comprehensive State Water Plan. Pursuant to Section 42-1734B(6), Idaho Code, the Comprehensive Aquifer Management Plan for the Eastern Snake Plain Aquifer ("ESPA CAMP") is approved as a component of the Comprehensive State Water Plan. Pursuant to Section 42-1734B(4), Idaho Code, all state agencies shall exercise their duties in a manner consistent with the ESPA CAMP.

"2. The Idaho Water Resource Board shall prepare and submit to the Legislature for approval, a funding mechanism for implementation of Phase I of the Comprehensive Aquifer Management Plan for the Eastern Snake Plain Aquifer. The funding mechanism shall be consistent with the funding participation targets set forth in the ESPA CAMP and shall be developed with the assistance of the ESPA CAMP Implementation Committee. The Idaho Water Resource Board shall, with

the assistance of the Implementation Committee, prepare and submit to the Legislature for approval any subsequent proposed changes to the ESPA CAMP. Implementation plans should seek to optimize outcomes for fish and wildlife, recreation, hydropower, municipalities, irrigation, aquaculture and other uses.

"3. Implementation of Phase I of the Comprehensive Aquifer Management Plan for the Eastern Snake Plain Aquifer is subject to legislative approval of a funding mechanism, which shall be consistent with the funding participation targets set forth in the ESPA CAMP. The act does not constitute an obligation of state funds and any state funding shall be subject to the availability of funds. State agencies may use previously appropriated funds to begin implementation of Phase I.

"4. The CAMP recognizes that incidental ground water recharge that occurs as a result of the exercise of surface and flood irrigation water rights is an important component of the Eastern Snake Plain Aquifer water supply. The CAMP implementation plan shall include measures that recognize the benefits of incidental recharge, and that will encourage water users and canal managers to continue



their historic surface water diversion practices.

"5. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval." Approved April 23, 2009.

**Compiler's Notes.** Section 1 of S.L. 2012, ch. 118 provided: "Pursuant to Sections 42-1734A and 42-1779, Idaho Code, the Idaho Water Resource Board has prepared and, by resolution dated July 29, 2011, adopted the Comprehensive Aquifer Management Plan for

the Rathdrum Prairie Aquifer as a component of the Comprehensive State Water Plan. Pursuant to Section 42-1734B(6) [subsection (6) of this section], Idaho Code, the Comprehensive Aquifer Management Plan for the Rathdrum Prairie Aquifer ("RP CAMP") is approved as a component of the Comprehensive State Water Plan, and pursuant to Section 42-1734B(4) [subsection (4) of this section], Idaho Code, all state agencies shall exercise their duties in a manner consistent with the RP CAMP."

#### **42-1737. Board approval — Criteria — Hearings — Appeals — Defining a misdemeanor — Injunctions. —**

(a) All project proposals involving the impoundment of water in a reservoir with an active storage capacity in excess of ten thousand (10,000) acre-feet, or the diversion of natural flow water appropriated pursuant to section 42-234, Idaho Code, for a managed recharge project in excess of ten thousand (10,000) acre-feet on an average annual basis, shall be submitted to the board for its approval or disapproval. No construction shall be commenced on any such project nor shall any diversion be permitted prior to receipt of board approval as herein provided and the board may institute injunctive proceedings to halt such construction or diversion. In the event a project is disapproved, this fact shall be certified by the board to the director of the department and such certification shall constitute the petition for cancelation of permit required by section 42-302, Idaho Code, and, pursuant to such certification, the procedure for cancelation of permit issued for such project shall be carried forward by said director.

(b) In determining whether a project proposal shall be approved, or disapproved, the board shall be guided by the following criteria:

1. Conserving the highest use of the water for all purposes.
2. The maximum economic development of the waters involved.
3. The control of the waters of this state for all beneficial purposes, including drainage, sanitation and flood control.
4. That sufficient water is available for appropriation for beneficial use.
5. The prevention of wasteful, uneconomic, impracticable or unreasonable use of the waters involved.
6. That all vested and inchoate rights to the waters of this state or to the use thereof have been protected by the issuance of a permit for the project by the director of the department.
7. The state water plan and water policy formulated under other laws of this state.

(c) The board shall by regulation, establish procedures for notice and hearing on those project proposals which must be submitted to the board and may authorize hearings by hearing officers. The board or its hearing officer shall have power to administer oaths and to require the attendance of such witnesses and the production of such books, records and papers as it may desire at any hearing and for that purpose the board may issue a subpoena for any witnesses or a subpoena duces tecum to compel the production of any books, records or papers which shall be served and

returned in the same manner as a subpoena in a civil case. In case of any disobedience or neglect to obey a subpoena or subpoena duces tecum it shall be the duty of the district court in any county of this state in which such disobedience, neglect or refusal occurs, or any judge thereof, on application by the board, to compel obedience by proceedings for contempt as in the case of a subpoena issued by a regularly constituted court. The sponsor of a project who appears before the board shall have similar powers and shall have the right to be represented by counsel. If the sponsor does not appear at the appointed time, and his absence is without sufficient cause, the board shall have the right to proceed in his absence or may consider absence to constitute an admission of facts contrary to the position of the sponsor. The board shall make findings of fact and conclusions of law leading to its approval or disapproval.

(d) Any sponsor of a project which has been disapproved shall have the right to have the proceedings of the board reviewed by the district court in the county of his residence. With the exception that judicial review may be had by the district court of the county of the residence of the sponsor, such judicial review shall be accomplished in accordance with the provisions of chapter 52, title 67, Idaho Code.

**History.**

1965, ch. 320, § 7, p. 901; am. 1969, ch. 469, § 3, p. 1346; am. 1974, ch. 20, § 26, p. 533; am. 1980, ch. 238, § 17, p. 526; am. 1993, ch. 216, § 38, p. 587; am. 2009, ch. 240, § 1, p. 740.

**Compiler's Notes.** The 2009 amendment, by ch. 240, in the first sentence of subsection

(a), inserted "or the diversion of natural flow water appropriated pursuant to section 42-234, Idaho Code, for a managed recharge project in excess of ten thousand (10,000) acre-feet on an average annual basis"; and, in subsection (b)7, inserted "plan and water" following "The state water."

**42-1740. Purposes.** — All revenue bonds authorized under the terms of this act may be issued and sold from time to time and in such amounts as are deemed necessary to provide sufficient funds for carrying out all its powers and, without limiting the generality thereof, shall include the following: acquisition of water rights, rehabilitation and repair of existing irrigation projects and irrigation facilities, and construction, maintenance, repair and operation of water projects, engineering and other costs for investigation and promotion of water projects, fiscal and legal expenses, cost of issuance of bonds including printing and advertising expenses, the establishment of bond reserves, and payment of interest on bonds.

**History.**

1965, ch. 319, § 2, p. 898; am. 1981, ch. 90, § 2, p. 125; am. 2005, ch. 362, § 3, p. 1151.

**Compiler's Notes.** Sections 1 and 2 of S.L. 2005, ch. 362 provided "Section 1. Legislative Findings. (1) Water users relying upon surface water and ground water supplies in many parts of Idaho, including the Snake River Basin, which encompasses a large portion of the state, are presently experiencing or may experience water shortages due to a combination of factors, including reduced aquifer recharge due to changes in surface water irrigation practices, increased ground

water withdrawals, and prolonged drought conditions.

"(2) It is essential that the state provide a reasonable degree of certainty and assistance in water resource management, water project funding, and water rights administration for the benefit and safeguarding of its citizens and for the benefit and safeguarding of the state and local economies that rely upon the diversion and use of water for their viability.

"(3) The legislature is determined to assist in achieving long-term stability in water supplies for the well-being of our citizens by encouraging the Water Resource Board to



utilize its constitutional and statutory authorities to finance water projects designed both to enhance available water supplies and reduce demands upon our water resources in a manner that is protective of individual rights and promotes the best interests of our citizens.

“Section 2. Idaho Water Resource Board Authorization. The Idaho Water Resource Board is authorized to take all actions necessary in accordance with existing law to plan, finance, acquire, establish, operate and maintain a program or projects to enhance water supplies and reduce demand for water through the financing of water rights acquisitions and managed recharge projects, to option, purchase, acquire, own, sell, exchange, lease, rent, and maintain water rights and other property deemed necessary or proper for such program or projects, to negotiate and enter into contracts for the acquisition or conveyance of water rights or interests therein, including to provide mitigation by the holders of junior-priority ground water rights for the benefit of the holders of senior-

priority surface water rights, to issue and sell revenue bonds under the provisions of Sections 42-1739 through 42-1749, Idaho Code, pledging thereto the revenues which the board shall derive from such program or project, in order to pay its costs of planning, financing, acquisition, establishment, operation and maintenance of such program or projects, and to deposit and withdraw program moneys from the Water Resource Board Revolving Development Fund received from appropriations, the sale of bonds, ground water districts, or from other sources, under the provisions of Sections 42-1750 through 42-1758, Idaho Code. All moneys paid or property supplied by the Idaho Water Resource Board for the purpose of carrying out the provisions of this act are hereby declared to be for water projects which are deemed to be in the public interest.”

Section 4 of S.L. 2005, ch. 362 is compiled as § 42-1753.

Section 8 of S.L. 2005, ch. 362 declared an emergency. Approved April 12, 2005.

**42-1753. Source of fund.** — Funds borrowed from the revolving development fund, together with interest due thereon, shall be repaid to the board and placed in the revolving fund together with receipts and revenues of any type and nature derived from any project constructed, operated, or maintained, in whole or in part, with moneys from the revolving fund, revenues received over and above the cost of projects financed by revenue bonds, revenues collected by or on behalf of water user entities for the purpose of repaying indebtedness under applicable statutory authority, revenues received from the sale of state land acquired by the board for water projects, surplus revenues from the sale of Carey Act (Title 43 USCA s. 641) lands, revenues received from the lease of water rights, fees received from water deliveries which are in excess of costs on projects sponsored by the board, gifts or grants from any source when the same are made for purposes consistent with those for which the revolving fund is established, and moneys from any other appropriate source.

**History.**

1969, ch. 333, § 4, p. 1051; am. 2005, ch. 362, § 4, p. 1149.

**Compiler's Notes.** Sections 3 and 5 of S.L.

2005, ch. 362 are compiled as §§ 42-1740 and 42-1754, respectively.

Section 8 of S.L. 2005, ch. 362 declared an emergency. Approved April 12, 2005.

**42-1754. Allocation of fund.** — The Idaho water resource board revolving development fund shall be allocated for use:

(a) To the board for a project which it deems to be “in the public interest” and which, in its opinion, further implements any extant Idaho state water plan, in such amounts as are necessary for preparation of a feasibility study of the project, engineering services in preparing designs and specifications, and for construction of the project.

(b) As loans from the revolving development fund which may be approved by the board and made to irrigation districts, canal or irrigation companies,



water users' associations, municipal or private corporations, or, in special cases when approved by the board, to individuals to finance project costs, provided, however, that no loans shall be made to finance feasibility studies except as a part of overall project costs.

(c) To establish reserve accounts or guarantee funds in the state treasury to aid in the funding of water projects. Interest earned on such moneys invested by the state treasurer shall be paid into the water resource board revolving development fund.

(d) To the board to finance joint ventures for project construction with federal agencies, neighboring states, legal subdivisions of the state, private corporations, or other organizations, and including the costs of feasibility studies, investigations, and other preparatory expenses, for purposes consistent with those for which the fund is established, and the board is authorized to use the fund for these purposes.

(e) To the board to finance feasibility studies, investigations, and other preparatory expenses for projects it intends to fund through the sale of revenue bonds or through use of funds from other sources.

(f) To the board for payment of costs associated with the issuance and repayment of the board's revenue bonds.

#### **History.**

1969, ch. 333, § 5, p. 1051; am. 1979, ch. 154, § 1, p. 469; am. 2005, ch. 362, § 5, p. 1149.

**Compiler's Notes.** Section 4 of S.L. 2005, ch. 362 is compiled as § 42-1753.

Section 7 of S.L. 2005, ch. 362 provided "Severability. The provisions of this act are

hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of the act."

Section 8 of S.L. 2005, ch. 362 declared an emergency. Approved April 12, 2005.

**42-1756. Loans from account — Application — Investigation — Approval — Repayment — Statement — Filing — Default.** — (1) Any irrigation district, canal or irrigation company, water users' association, municipal corporation, municipality, private corporation, aquifer protection district, or, in special cases approved by the board, an individual may file an application with the board for a loan from the revolving account for the purpose of financing project costs. Such application shall be filed in such manner, and shall be in such form and be accompanied by such information as may be prescribed by the board; provided, however, that any such application filed with the board under the provisions of this act, shall:

(a) Describe the nature and purpose(s) of the proposed project.

(b) Set forth or be accompanied by a plan for development of the proposed project, together with such engineering and economic feasibility data and estimated costs of construction as may be required by the board.

(c) State whether money other than that for which application is made to the board will be used for project costs, and whether such money is available or has been sought for this purpose.

(d) Show that the applicant holds or can acquire title to all lands or has the necessary easements and rights-of-way for the project and related lands, and has or can acquire all water rights necessary for the construction, operation and maintenance of the proposed project, or that there

exists sufficient water available for appropriation by proof of a permit issued by the director of the department of water resources.

(2) Upon receipt of an application, the board shall evaluate and, if it deems it to be necessary, investigate all aspects of the proposed project and the proposed construction thereof. As a part of such investigation, the board shall determine whether the plan for development of the project is satisfactory. If the board determines that the plan is unsatisfactory, it shall return the application to the applicant and may make such recommendations to the applicant as are considered necessary to make the plan satisfactory.

(3) The board may approve a loan for project costs if after investigation (if this is deemed necessary,) and evaluation it finds that:

- (a) The plan does not conflict with any extant Idaho state water plan;
- (b) The proposed project is feasible from an engineering standpoint and economically justified, with studies showing a favorable benefit to cost ratio;
- (c) The plan for development of the proposed project is satisfactory;
- (d) The applicant is qualified and responsible;
- (e) There is reasonable assurance that the borrower can repay the loan; and
- (f) That money in the revolving account is available for the loan.

(4) If the board approves a loan, the board and the applicant or applicants shall enter into an agreement for repayment to the revolving account of money loaned therefrom, together with interest thereon at reasonable rates as determined by the board. The agreement shall further provide that repayment of the loan, together with interest thereon, shall commence no later than one (1) full year after construction of the project is completed, and that repayment shall be completed within the time period specified by the board; provided that repayment to reserve accounts or guarantee funds shall be made as provided by order of the board. The repayment period shall not exceed sixty (60) years, except that the board may extend the time for making repayment in the event of emergency or hardship. Such agreement shall also provide for such assurances of, and security for, repayment of the loan as are considered necessary by the board.

(5) The state shall have a lien upon a project constructed with money from the revolving account for the amount of the loan, together with the interest thereon. This lien shall attach to all project facilities, equipment, easements, real property and property of any kind or nature associated with the project and all water rights associated in any way with the project. The board shall file a statement of the loan, its amount, terms and a description of the project with the county recorder of each county in which the project or any part thereof is located. The county recorder shall record the lien in a book kept for the recording of liens and it shall be indexed as other liens are required by law to be indexed. The lien shall be valid until paid in full or otherwise discharged. The lien shall be foreclosed in accordance with applicable state law governing foreclosure of mortgages and liens as set forth in chapter 1 of title 6, Idaho Code, chapter 13 of title 45, Idaho Code, and related provisions of the statutes of this state.

(6) If an applicant fails to comply with the repayment contract, its interest in the project may be conveyed to a successor upon approval by the

board, which may contract with the qualified successor in interest of the original obligor for repayment of the loan, together with the interest thereon, and for succession to its rights and obligations in any contract with the board.

(7) The state shall have a lien on any or all projects which the board improves or renovates with money from the revolving account, and such lien shall be valid and continue in effect until such funds, together with interest thereon, have been paid in full and the lien discharged. The board shall file a statement of the lien, and the lien shall be foreclosed upon all project property and rights as provided in subsection (5) of this section.

**History.**  
1969, ch. 333, § 7, p. 1051; am. 1978, ch. 345, § 12, p. 884; am. 1979, ch. 154, § 2, p. 469; am. 2006, ch. 126, § 1, p. 362; am. 2006, ch. 304, § 2, p. 937.  
**Compiler’s Notes.** This section was amended by two 2006 acts which appear to be compatible and have been compiled together.  
The 2006 amendment, by ch. 126, redesignig-

nated the subsections and deleted former subsection (c)(7), which read: “That the loan does not exceed five hundred thousand dollars (\$500,000) unless legislative approval has been obtained.”  
The 2006 amendment, by ch. 304, inserted “aquifer protection district” in the introductory paragraph of subsection (1).

**42-1761. Water supply bank created.**

**Idaho Law Review.** Why Does Idaho’s Water Law Regime Provide for Forfeiture of Water Rights?, Peter R. Anderson and Aaron J. Kraft. 48 Idaho L. Rev. 419 (2012).

**42-1762. Rules and regulations — Acquisition of water rights.**

**Idaho Law Review.** Why Does Idaho’s Water Law Regime Provide for Forfeiture of Water Rights?, Peter R. Anderson and Aaron J. Kraft. 48 Idaho L. Rev. 419 (2012).

**42-1763. Rentals from bank — Approval by director.**

**Idaho Law Review.** Why Does Idaho’s Water Law Regime Provide for Forfeiture of Water Rights?, Peter R. Anderson and Aaron J. Kraft. 48 Idaho L. Rev. 419 (2012).

**42-1763B. Interim authority for rental of water to augment flows for listed anadromous fish.** — (1) Legislative findings and intent regarding rental of water by the U.S. bureau of reclamation in the Snake River basin within Idaho to augment lower Snake River flows for anadromous fish listed under the endangered species act. The legislature finds that the U.S. bureau of reclamation proposes to release up to four hundred twenty-seven thousand (427,000) acre feet of leased or uncontracted water diverted from the Snake River basin to reservoir storage above Lewiston, and to lease or acquire up to sixty thousand (60,000) acre feet of consumptive natural flow water rights diverted and consumed below Milner dam and above Swan Falls dam from the mainstem of the Snake River to augment flows downstream of Hells Canyon dam during 2005 and through December 31, 2034. The state of Idaho is experiencing serious drought conditions and it is therefore uncertain whether this water will be available for rental for flow augmentation purposes in all years. The legislature further finds that authorization of this legislation is necessary for approval and implementa-



tion of the Snake River Water Rights Agreement of 2004 (Mediator's Term Sheet dated April 20, 2004, and submitted on that date to the SRBA Court in SRBA Consolidated Subcase 03-10022 and SRBA Consolidated Subcase 67-13701, with all appendices to the document), as approved, ratified, and confirmed by the 108th Congress of the United States in the "Snake River Water Rights Act of 2004," Pub. L. No. 108-447 (H.R. 4818), 118 Stat. 3431 to 3441 (December 8, 2004). Therefore, the legislature authorizes the U.S. bureau of reclamation to lease storage and natural flow water rights through the state water supply bank and local rental pools under the limited conditions of this section. Any rentals of water for flow augmentation under any other provision of law, including section 42-108A, Idaho Code, shall be subject to the limitations and conditions of this section and the Snake River Water Rights Agreement of 2004.

(2) Rental of water by the U.S. bureau of reclamation.

(a) Notwithstanding the legislative approval required in section 42-108, Idaho Code, any storage water released and any natural flow water rights leased or acquired by the bureau within the state of Idaho for listed anadromous fish pursuant to this section must be rented through the water bank operated by the Idaho water resource board pursuant to sections 42-1761 through 42-1764, Idaho Code, or, in the case of storage water releases, through local rental committees, created pursuant to section 42-1765, Idaho Code, under their respective water bank rules.

(b) For any rental of water pursuant to this section, the director shall not be required to determine under section 42-1763, Idaho Code, whether the water supply is sufficient for the purpose for which it is sought, whether the rental would cause the use of water to be enlarged beyond that authorized under the water right to be rented, whether such use is in the public interest, or whether such use is consistent with the factors enumerated under subsection (3) of section 42-401, Idaho Code.

(3) Conditions on water rentals.

(a) Any water made available under this section shall be obtained only from willing lessors. Any water rented under this section from sources located within a basin having a local rental committee established pursuant to section 42-1765, Idaho Code, or section 42-1765A, Idaho Code, shall be rented pursuant to this section only through the local rental committee.

(b) Storage water made available under this section shall be limited to four hundred twenty-seven thousand (427,000) acre feet annually, and natural consumptive flow water shall be limited to not more than the sixty thousand (60,000) acre feet annually, that accrue to natural flow water rights, acquired or leased by the U.S. bureau of reclamation pursuant to the terms of the Snake River Water Rights Agreement of 2004. These amounts shall be reduced by other water the U.S. bureau of reclamation provides for flow augmentation for listed anadromous fish from the Snake River basin above Lewiston.

(c) In no event shall the release of water under this section cause the water surface of Lake Cascade to be below the elevation required to maintain a storage volume of three hundred thousand (300,000) acre feet,

fifty thousand (50,000) acre feet of which is dead space, which is currently estimated to be at an elevation of four thousand eight hundred nine and two-tenths (4,809.2) feet. In addition, the state of Idaho shall pursue a shaping agreement for any uncontracted water released from Lake Cascade under this section.

(d) The rental or use of water under this section shall be in compliance with any permit, applicable water quality rule and regulation or other requirements of the clean water act, shall not cause jeopardy to other species in the state of Idaho, and shall not result in significant adverse impacts to recreational uses of the waters of the Snake River basin in Idaho. The state of Idaho shall not require any restriction, modification, or condition on the diversion, storage, use, discharge of water, or land use to remedy or address violations of water quality standards or other clean water act requirements to the extent the rental or use of water by the U.S. bureau of reclamation under this section causes the violations.

(e) The U.S. bureau of reclamation shall submit a report to the director by January 15 of each year describing the time, volume and purpose of water provided for listed anadromous fish from the Snake River basin above Lewiston during the past year and shall report on the plan for the spring and summer chinook by April 1 and on the plan for the fall chinook by July 15 of each year.

(f) All water rented or used by the U.S. bureau of reclamation under this section from above Hells Canyon dam must be used for power production purposes within the state of Idaho.

(g) All water rented or used by the U.S. bureau of reclamation under this section shall be subject to the terms and conditions contained in the Snake River Flow Component of the Snake River Water Rights Agreement of 2004.

(h) Nothing herein shall entitle the U.S. bureau of reclamation to rent or use water for flow augmentation upon termination or expiration of the permission given in this section.

(4) Nothing in this section shall be construed to alter, or authorize the U.S. bureau of reclamation to modify in any way its existing contractual obligations, or to constitute a finding by the legislature that the rental or use of storage water or natural flow water rights for flow augmentation for listed anadromous fish or any other species is a beneficial use of water, that it is in the public interest, or whether such use injures existing water rights.

(5) This section shall not become effective until the director certifies to the governor that the U.S. bureau of reclamation's applications to transfer water right numbers 4616, 4617, 4618, 4623, 4625, 4626, 4627, 4628, 4629, 4630, 4631, 4632, 4633 and 4636, and to amend water right permit numbers 25-07004 and 63-3618 will be withdrawn, or held in abeyance while this section is in effect, and the governor further certifies that the biological opinions required by the Snake River Water Rights Agreement of 2004 have been issued.

(6) This act shall be null, void and of no force and effect upon the expiration or termination of the Snake River Flow Component of the Snake River Water Rights Agreement of 2004. In addition, it is the intent of the

legislature to consider the repeal of this section in the event that any of the provisions of the Snake River Flow Component of the Snake River Water Rights Agreement of 2004 are modified or declared arbitrary, capricious or otherwise unlawful or set aside by any federal court or there is a finding of jeopardy by any federal court in regard to any biological opinions for projects operated by the U.S. bureau of reclamation in the Snake River basin in Idaho.

**History.**

I.C., § 42-1763B, as added by 2000, ch. 222, § 2, p. 616; am. 2001, ch. 394, § 1, p. 1372; am. 2002, ch. 349, § 1, p. 997; am. 2005, ch. 149, § 1, p. 462; am. 2005, ch. 400, § 1, p. 1363.

**Compiler's Notes.** On April 27, 2007, the governor issued a proclamation stating that the requirements added by S.L. 2005, Chapter 400 to subsection (5), certification that the biological opinions required by the Snake

River Water Rights Agreement of 2004 have been released, have been met. As of that date, the provisions of this section are operative.

S.L. 2005, ch. 400 amended this section as this section read following its amendment by S.L. 2005, ch. 149 (House Bill 153).

Section 2 of S.L. 2005, ch. 149 and Section 2 of S.L. 2005, ch. 400 declared an emergency retroactively to January 1, 2005 and approved March 24, 2005.

**42-1764. Substitution for transfer proceeding — Rights not subject to forfeiture — No dedication of rights.**

**Idaho Law Review.** Why Does Idaho's Water Law Regime Provide for Forfeiture of

Water Rights?, Peter R. Anderson and Aaron J. Kraft. 48 Idaho L. Rev. 419 (2012).

**42-1765B. Wood River basin — Water rights donated to enhance instream flows and downstream water supplies — Local committee. [Repealed.]**

Repealed by S.L. 2007, ch. 262, § 4, effective December 31, 2012.

**History.**

I.C., § 42-1765B, as added by 2007, ch. 262, § 2, p. 777.

**42-1777. Water resources adjudication fund. —** (1) A water resource adjudication fund is hereby created and established in the state treasury. The state controller may establish multiple fund details within the fund to account for fees collected from different adjudications. Fee moneys in the fund are to be utilized by the department of water resources, upon appropriation by the legislature, to pay the costs of the department attributable to general water rights adjudications conducted pursuant to chapter 14, title 42, Idaho Code.

The state treasurer is directed to invest all moneys in the fund. All interest or other income accruing from such investment shall accrue to the appropriate fund detail.

(2) Fee moneys in the fund may also be utilized by the judiciary, upon appropriation by the legislature, to pay for judicial expenses directly relating to each adjudication including, but not limited to, compensation and expenses of special masters appointed by the Idaho supreme court or by the district court, compensation and expenses of clerical staff of the district



court, and publication, notice and mailing costs incurred by the district court.

**History.**

I.C., § 42-1777, as added by 1985, ch. 18, § 4, p. 27; am. 1986, ch. 220, § 24, p. 558; am. 2006, ch. 400, § 5, p. 1224.

**Compiler's Notes.** The 2006 amendment, by ch. 400, substituted "state treasury" for "agency asset fund" in the first sentence of subsection (1); substituted "fund" for "account" throughout the section; inserted the second sentence in subsection (1); substituted "appropriate fund detail" for "account" at the end of subsection (1); and substituted "each adjudication" for "the Snake river adjudication" in subsection (2).

Sections 1 to 4 of S.L. 2006, ch. 400, provided: "Section 1. In addition to any other appropriation provided by law, there is hereby appropriated to the Department of Water Resources, to commence a Northern Idaho Water Rights Adjudication, \$1,325,000 from the General Fund for the period July 1, 2006, through June 30, 2007.

"Section 2. In addition to any other authorization provided by law, the Department of Water Resources is authorized eleven (11) full time equivalent positions during the period July 1, 2006, through June 30, 2007, for the purpose specified in Section 1 of this act.

"Section 3. In addition to any other appropriation provided by law, there is hereby appropriated to the Supreme Court, \$10,000 from the General Fund to be used for a Northern Idaho Water Rights Adjudication for the period July 1, 2006, through June 30, 2007.

"Section 4. It is legislative intent that all moneys appropriated in this act be used exclusively to commence a Northern Idaho Water Rights Adjudication and that all unexpended and unencumbered General Fund moneys remaining at the end of fiscal year 2007 be reverted to the General Fund."

**42-1779. Statewide comprehensive aquifer planning and management effort.** — Pursuant to the provisions of Idaho law and legislative funding approval, the Idaho water resource board and the Idaho department of water resources shall conduct a statewide comprehensive aquifer planning and management effort over a ten (10) year period of time beginning in fiscal year 2009. Funding for the statewide comprehensive aquifer planning and management effort shall be used for technical studies, facilitation services, hydrologic monitoring, measurement and comprehensive plan development as well as for personnel costs, operating expenses and capital outlay associated with the statewide comprehensive aquifer planning and management effort.

**History.**

I.C., § 42-1779, as added by 2008, ch. 134, § 2, p. 377.

**Compiler's Notes.** Section 1 of S.L. 2012, ch. 118 provided: "Pursuant to Sections 42-1734A and 42-1779 [this section], Idaho Code, the Idaho Water Resource Board has prepared and, by resolution dated July 29, 2011, adopted the Comprehensive Aquifer Management Plan for the Rathdrum Prairie Aquifer

as a component of the Comprehensive State Water Plan. Pursuant to Section 42-1734B(6), Idaho Code, the Comprehensive Aquifer Management Plan for the Rathdrum Prairie Aquifer ("RP CAMP") is approved as a component of the Comprehensive State Water Plan, and pursuant to Section 42-1734B(4), Idaho Code, all state agencies shall exercise their duties in a manner consistent with the RP CAMP."

**42-1780. Aquifer planning and management fund — Secondary aquifer planning, management and implementation fund.** — (1) The aquifer planning and management fund is hereby created in the state treasury. Pursuant to appropriation, moneys in the fund shall be used for technical studies, facilitation services, hydrologic monitoring, measurement and comprehensive plan development as well as for personnel costs, operating expenditures and capital outlay associated with the statewide

comprehensive aquifer planning and management effort. The state treasurer shall invest the idle moneys of the fund, and the interest earned on such investments shall be retained by the fund.

(2) There is hereby created in the state treasury, the secondary aquifer planning, management and implementation fund, hereinafter referred to as the secondary fund. The secondary fund shall consist of moneys appropriated to the fund, moneys voluntarily contributed by water users or through water delivery entities or districts having authority to contribute, or through contributions, gifts or grants from any other source, and any other moneys that may hereafter be provided by law. All moneys in the secondary fund shall be used for the purposes for which the moneys were provided through appropriation, contribution or otherwise, and moneys in the secondary fund are appropriated continuously to the water resource board for technical studies, project management services, hydrologic monitoring, measurement and comprehensive plan development, as well as for personnel costs, operating expenditures, capital outlay and water projects associated with the statewide comprehensive aquifer planning and management effort, and shall not be subject to the provisions of the standard appropriations act of 1945 or the provisions of section 67-3516, Idaho Code. The state treasurer shall invest the idle moneys of the fund, and the interest earned on such investments shall be retained by the fund.

#### History.

I.C., § 42-1780, as added by 2008, ch. 321, § 3, p. 890; am. 2010, ch. 356, § 1, p. 934.

**Compiler's Notes.** The 2010 amendment, by ch. 356, in the section catchline, added

“secondary aquifer planning, management and implementation fund”; and added the subsection (1) designation and subsection (2).

Section 2 of S.L. 2010, ch. 356 declared an emergency. Approved April 12, 2010.

## CHAPTER 18

### DIRECTOR OF DEPARTMENT OF WATER RESOURCES

#### SECTION.

42-1806. Rural Idaho Economic Development Biofuel Infrastructure, Consumer Choice and Fuel Inde-

pendence Act of 2007 — Retail fuel outlet matching grants for biofuel infrastructure. [Null and void.]

## 42-1805. Additional duties.

#### Administrative Rules.

To the extent that the district court engaged in an “as applied” analysis of the Rules for Conjunctive Management of Surface and Ground Water Resources (CM Rules), it was in error, as administrative remedies had not been exhausted. *Am. Falls Reservoir Dist. No. 2 v. Idaho Dep’t of Water Res.*, 143 Idaho 862, 154 P.3d 433 (2007).

As the Rules for Conjunctive Management of Surface and Ground Water Resources (CM

Rules) specifically incorporated Idaho law, the failure to recite certain burdens and evidentiary standards, set specific timelines and set objective standards did not make them facially unconstitutional. The CM Rules also survive a facial challenge in the recognition given to partial decrees and in the treatment of carryover water. *Am. Falls Reservoir Dist. No. 2 v. Idaho Dep’t of Water Res.*, 143 Idaho 862, 154 P.3d 433 (2007).

**42-1806. Rural Idaho Economic Development Biofuel Infrastructure, Consumer Choice and Fuel Independence Act of 2007 — Retail fuel outlet matching grants for biofuel infrastructure. [Null and void.]**

Null and void, pursuant to S.L. 2007, ch. 185, § 2, effective July 1, 2012.

**History.**

I.C., § 42-1806, as added by 2007, ch. 185,  
§ 1, p. 533.

CHAPTER 20

RECLAMATION OF CAREY ACT LANDS

SECTION.

42-2042. Authorization — Financing.

**42-2042. Authorization — Financing.** — Pursuant to section 42-1756, Idaho Code, the Idaho water resource board is authorized to plan, finance, construct, acquire, operate, own, maintain, and be the project sponsor and developer of a water resource development project as provided in the provisions of the Carey Act and to use the water resource board revolving development fund and revenues or other additions thereto from any source, including, but not limited to, proceeds from loans secured by project revenues, to finance or guarantee the funding of said project. Said project is known as the Indian Hills project, which is located in Owyhee county approximately two (2) miles southwest of Hammett, Idaho. The Idaho water resource board is authorized by this act to proceed with the project on the basis identified and approved by the Idaho water resource board in the proposal submitted, pursuant to section 42-1734(11), Idaho Code, to the governor of Idaho on November 25, 1974; and the Idaho water resource board is further authorized to proceed in accordance with and exercise the authority for issuance of revenue bonds as provided in section 42-1734(17), Idaho Code. The Idaho water resource board is further authorized to own, sell, convey, mortgage, pledge or incumber the lands for said project and do all things necessary for the construction and completion of said project including the acquisition of all necessary real and personal property in connection therewith, together with all necessary pumping and water distribution works and facilities at the site of such water project and all other necessary and related structures and equipment, and, in addition to the powers conferred elsewhere on the Idaho water resource board, to issue and sell revenue bonds under the provisions of sections 42-1739 through 42-1749, Idaho Code, pledging thereto the revenues which the board shall derive from such water project, and such other revenues as may come into the water resource board revolving development fund from any source whatsoever, including, but not limited to, any tax funds pledged or dedicated to the water resource board revolving development fund, in order to pay the costs of planning, financing, acquiring, construction, operation and maintenance of such water project. The water resource board is further authorized to charge and collect such fees and assessments necessary for



payment and reimbursement for all the costs of said project and the water resource board shall have a first and prior lien upon all lands of the project and water rights now appurtenant or to become appurtenant to said lands and water distribution facilities; said lien shall be in all respects prior to any and all other liens no matter how created or attempted to be created by the owner or possessor of the project lands or by law, and shall remain in full force and effect until the last deferred payment for water rights and project facilities is fully paid and satisfied according to the terms of the contract under which water is acquired for said project by persons making entry upon said lands.

**History.**

1976, ch. 306, § 2, p. 1049; am. 2006, ch. 126, § 2, p. 362.

**Compiler's Notes.** The 2006 amendment,

by ch. 126, updated statutory references near the beginning of the section.

## CHAPTER 22

### OPERATING COMPANIES — LIEN FOR MAINTENANCE CHARGES

**SECTION.**

42-2205. Limitation of lien.

**42-2205. Limitation of lien.** — No lien provided for in this chapter binds any land for a longer period than three (3) years after the filing of the statement mentioned in section 42-2203, Idaho Code, unless proceedings be commenced in a proper court within that time to enforce such lien.

**History.**

1913, ch. 120, § 5, p. 466; reen. C.L. 129:6; C.S., § 3044; I.C.A., § 41-1905; am. 2013, ch. 60, § 1, p. 136.

**Compiler's Notes.** The 2013 amendment,

by ch. 60, substituted "three (3) years" for "two (2) years."

## CHAPTER 26

### SALE OF WATER RIGHTS

#### 42-2602. Examination of works by department of water resources.

**Compiler's Notes.** The historical citation for this section contains a typographical error in the bound volume. The citation should

read: [1909, p. 335, § 2; reen. C.L. 241:2; C.S., § 3062; I.C.A., § 41-2202.]

## CHAPTER 29

### DRAINAGE DISTRICTS

**SECTION.**

42-2914. Examination of lands — Report of commissioners — Apportionment and reapportionment of benefits and damages.

42-2961. Apportionment of cost of maintenance.

**SECTION.**

42-2962. Levy of and limitation on assessments.

42-2982. Consolidation of districts.

**42-2914. Examination of lands — Report of commissioners — Apportionment and reapportionment of benefits and damages.** — As soon as may be after their appointment, or within such time as the court may direct, the commissioners shall examine the lands described in the petition and proposed to be drained and protected, and the lands over and upon which the work is proposed to be constructed and shall determine and report:

1. Whether the starting point, route and terminus of the proposed work and the proposed location thereof, is or are in all respects proper and feasible, and if not, what is or are so.

2. The estimated cost of the proposed work, including all incidental expenses and the cost of proceedings therefor.

3. The probable cost of keeping the same in repair after the work is completed.

4. What lands will be injured thereby and the aggregate amount of such injuries; and they shall award to each tract or lot, by whomsoever held, the amount of damage so determined by them.

5. What lands will be benefited by the construction of the proposed work, whether the benefits will equal or exceed the aggregate cost of constructing such work, including all incidental expenses, costs of proceedings and damages; and they shall apportion and assess the estimated cost of the same on the lands so benefited by setting opposite the correct description of each tract, lot or easement, the portion of such cost assessed as benefits thereon. And if any particular part of the work so proposed to be done shall be assessed upon any particular tracts or lots of land or upon any municipality or corporation they shall so specify; and if any municipality or corporation should in their judgment bear a part of the expense or as such will derive a public or special benefit from the whole or any part of such proposed work, they shall so report and assess the amount of such benefits.

6. Whether the proposed district, as set out in the petition filed, will embrace all the lands that may be damaged or benefited by the proposed work, and if not, what additional lands will be benefited or damaged and the amount of the benefits or damages in the same manner as though such lands were included in such original petition.

7. If the commissioners determine the lands benefited or the amount of said benefits has either changed or is in error, the commissioners may petition the court to reapportion the benefits to part or all of the lands within the district. Upon receipt of a petition, the court shall make and enter an order fixing a time and place when and where all persons interested may appear and object to the reapportionment of benefits, and the clerk of the court shall cause publication of the order in three (3) consecutive weekly issues in a newspaper of general circulation within each county in which any of the lands for which reapportionment of benefits is sought are located. Any landowner affected by the reapportionment of benefits may object against the whole or any part of the reapportionment pursuant to the provisions of section 42-2920, Idaho Code. Upon a hearing pursuant to the provisions of section 42-2921, Idaho Code, the court shall issue an order setting forth the reapportionment of benefits, if any.

**History.**

1913, ch. 16, § 9, p. 58; reen. C.L. 168:12; C.S., § 4504; I.C.A., § 41-2514; am. 2012, ch. 106, § 1, p. 282.

**Compiler's Notes.** The 2012 amendment,

by ch. 106, inserted "and reapportionment" in the section heading and added subsection 7.

**42-2961. Apportionment of cost of maintenance.** — The board of commissioners of any drainage district organized under the provisions of this chapter shall, on or before the third Monday of September of each year, make an estimate of the cost of maintenance of the drainage system constructed in such district, which estimate shall include the cost of making any necessary repairs that it might become necessary to make in the maintenance of such system. Such estimate shall be made for the succeeding year, and the amount so estimated shall be certified by the board of commissioners to the auditor of the county in which such district is located, on or before said date, and the amount thereof shall be apportioned to the landowners in such district benefited by said improvement in proportion to the benefit apportioned or reapportioned, and such amount shall be added to the general taxes of such landowners and collected therewith; provided however, that at the option of the commissioners the amount apportioned to every landowner on any parcel or piece of land shall be not less than one dollar (\$1.00), which amount shall be a minimum assessment to be collected as a tax for the year on every such parcel or piece of land.

**History.**

1913, ch. 16, § 23, p. 58; reen. C.L. 168:58; am. 1919, ch. 20, § 1, p. 82; C.S., § 4552; am. 1927, ch. 53, § 1, p. 68; I.C.A., § 41-2561; am. 1953, ch. 257, § 1, p. 411; am. 1974, ch. 118, § 1, p. 1289; am. 2012, ch. 106, § 2, p. 282.

**Compiler's Notes.** The 2012 amendment,

by ch. 106, substituted "to the benefit apportioned or reapportioned" for "to the maximum benefit originally assessed" near the middle of the second sentence.

**42-2962. Levy of and limitation on assessments.** — The commissioners may also levy assessments for any expense necessarily incurred by them for construction, maintenance, repair, or any extraordinary reasons, and also may add to said assessment sufficient to pay any deficiency occurring the preceding year or any other unpaid warrant indebtedness, if any, or to pay any outstanding warrants: provided, that any assessments to be hereafter made by any drainage commissioners to pay warrants shall not exceed twenty percent (20%) of the original cost of organization and construction in addition to the assessments which may be levied under section 42-2936, and such assessments, when made, shall be apportioned under section 42-2961, Idaho Code, and collected as hereinbefore provided for.

**History.**

1913, ch. 16, § 23, p. 58; reen. C.L. 168:58; am. 1919, ch. 20, part of § 1, p. 82; C.S., § 4553; I.C.A., § 41-2562; am. 2012, ch. 106, § 3, p. 282.

**Compiler's Notes.** The 2012 amendment,

by ch. 106, inserted "under section 42-2961, Idaho Code" near the end of the section.

**42-2982. Consolidation of districts.** — (1) If the boards of commissioners of any two (2) or more drainage districts formed under this chapter deem it in the best interest of their respective districts that they be



consolidated into a single district, and if said districts are contiguous or lie at least in part within the same county, such boards may petition the district court of the county in which a greater portion of the lands of said proposed district are located for an order consolidating the same districts. For purposes of this section, districts may be considered to be contiguous even though they are separated by a body of water or other natural barrier so long as they are located in close proximity to each other. The petition shall be a joint petition signed by a majority of the commissioners of each respective board and attested to by the secretary of each board. The petition shall set forth a description of the lands and boundaries for the respective districts, a description of the proposed consolidated district and any facts showing that the consolidation is in the best interests of said districts. The petition shall also set forth and report the total outstanding obligation bonds of each consolidating district, the total value of the assets held by each consolidating district, the total levy assessed in each consolidating district in its most recent fiscal year, and the projected total levy to be assessed for the next complete fiscal year in the proposed newly consolidated district.

(2) Evidence showing that the proposed consolidation is in the best interests of the districts may include, but is not limited to: that which shows that the proposed system of drainage will be conducive to providing the same benefits previously apportioned to the lands within the respective districts, enhance the functioning of the respective districts, the public health, convenience and welfare, or increase the public revenue, or that the consolidation of said districts and the said system of drainage and reclamation is a proper and an advantageous method of accomplishing the relief sought.

(3) Upon receiving a petition brought under this section, the district court shall fix a time and place for the hearing of the petition, and the time and manner of filing any objections to the petition. Said hearing shall be held no sooner than sixty (60) days and no later than one hundred twenty (120) days after the first publication of notice of hearing. The clerk of the court shall cause publication of such order in three (3) consecutive weekly issues in a newspaper of general circulation within each county in which any of the lands within the said proposed consolidated district are located; together with a notice of the time and place at which the district court will consider said petition for consolidation. The petitioners shall pay all costs of publication.

(4) Any person objecting to a petition for consolidation as described in this section shall provide for filing of written objection with the court. Only landowners within the proposed consolidated district, owners of land over which the drainage water from the proposed district would flow, and landowners served by any of the respective districts included in the petition shall have standing to file an objection to said petition. Written objections must be filed and served upon petitioners no later than twenty-one (21) days prior to the date of the hearing. The form of the objection shall be as provided in the Idaho rules of civil procedure. Each objection shall identify the name of the landowner entering the objection along with the objecting party's address, location of the landowner's land by township, range and

section; identify the district or districts in which those lands lie; and state the nature or description of objection and basis or reasoning for the objection. Objections shall be limited to determining whether or not the proposed consolidation is in the best interests of the districts.

(5) The judge of the court shall, at the hearing herein provided, hear and consider argument from the petitioners and decide whether the proposed consolidation is in the best interests of said districts. The court shall then consider evidence in objection only from landowners who have filed a written objection as described in subsection (4) of this section, and only such evidence as may be presented for or against the petition or objections thereto. The landowners who have filed written objections shall bear the burden of proving that the consolidation is not in the best interests of the districts. After any evidence offered in opposition to the petition, the petitioners may offer evidence regarding the consolidation or in opposition to any objections entered. Based on the agreement in the petition to consolidate by the boards of the respective districts, there shall be a rebuttable presumption that the proposed consolidation of the districts is in the best interests of the petitioning districts and the landowners therein, unless the court finds by a preponderance of the evidence that the proposed consolidation is not in the best interests of the districts. Consolidation shall not be permitted to either exclude from the consolidated district lands that are within the petitioning districts or to include lands within the consolidated district that are not within the petitioning districts. The court shall make its determination wholly in the affirmative or negative whether said petitioning districts shall be consolidated.

(6) If the petition is granted, the court shall cause an order to be entered and recorded in the judgment record of each of the counties in which the lands within the consolidated district are situated, setting forth the facts found upon the hearing of said petition, and said order shall define the boundaries of said district and describe the lands included therein by township, range and section only. The clerk of said district court shall cause a copy of the order declaring said consolidated district, duly certified, to be filed in the office of the secretary of state. From the date of said filing and thereafter, said district consolidation shall be deemed complete.

(7) The court shall name the commissioners appointed by it for the consolidated district pursuant to the provisions of section 42-2910, Idaho Code. In appointing commissioners to the newly consolidated district, the court shall consider preference to appointment of at least one (1) commissioner from each of the districts petitioning for consolidation. The consolidated district shall be known and described by the name and number of the largest district of those consolidated.

(8) The provisions of this section shall apply exclusively to the consolidation of drainage districts which have been formed under this chapter.

**History.**

I.C., § 42-2982, as added by 2011, ch. 256,  
§ 1, p. 701.

## CHAPTER 31

## FLOOD CONTROL DISTRICTS

## SECTION.

42-3115. Commissioners — Powers and duties.

42-3116. Sealed bids — When required —

Publication of notice. [Repealed.]

**42-3115. Commissioners — Powers and duties.** — The board of commissioners of flood control districts shall have the following powers and duties:

1. To annually fix and determine, the amount of money required to be raised by taxation to supply funds for costs of construction, costs of operation and maintenance of the work and equipment of the district, and to levy and cause to be collected assessments on real property within the district in an amount not to exceed six hundredths of one percent (.06%) of the market value for assessment purposes on all taxable property within the district, provided however that a higher levy may be approved and ratified by the qualified voters at an election to be held, subject to the provisions of section 34-106, Idaho Code, for that purpose in the same manner as provided for the approval and ratification of contracts, in section 42-3117, Idaho Code, and said levy shall be certified by the board to the board of county commissioners of the county, or counties, in which said district is located, with directions that at the time and in the manner required by law for levying taxes for county purposes, such board, or boards, of county commissioners shall levy such tax upon the market value for assessment purposes of the real property within the boundaries of the district. Such certification of levies shall be prepared and forwarded by the board of the flood control district to the board, or boards, of county commissioners on or before September 1 of each year.

Such levies shall be levied and collected in the manner provided by law, and the moneys collected shall be turned over to the treasurer or treasurers, of the county, or counties, in which said district is located.

Said moneys shall be public funds and subject to the provisions of the public depository laws of the state.

2. To employ such personnel as may be necessary to carry out the purposes and objects of this chapter, with the full power to bind said district for the compensation of such personnel.

3. To sue and be sued in the name of the district; to have a seal, which seal shall be judicially noticed; to have perpetual succession unless terminated as hereinafter provided; to make and execute contracts and other instruments necessary or convenient to the exercise of its power and to promulgate, amend and repeal rules not consistent with the provisions of this chapter.

4. To manage and conduct the business and affairs of the district, both within and without the district.

5. To construct, operate and maintain structural works of improvement for the prevention of floodwater and sediment damages, and the conservation, development, utilization, and disposal of water, whether within or



without the boundaries of the district, and to enter into contract for the purposes set forth above, provided however, that the board shall purchase goods and services in accordance with the provisions of chapter 28, title 67, Idaho Code. However, where it is determined by order of the board that there is an existing emergency, or where it is determined that the district is in a flood fight resulting from unanticipated conditions, the requirement for sealed competitive bids shall not apply.

6. To prescribe the duties of officers, agents and employees as may be required.

7. To establish the fiscal year of the district and to keep records of all business transactions of the district.

8. To prepare a statement of the financial condition of the district at the end of each fiscal year, in a form to be prescribed by the director or by the legislative services office, and publish in at least one (1) issue of some newspaper published, or in general circulation in, the county, or counties, in which such district is located and to file a certified copy of such financial report with the director and the legislative services office on or before February 2 of each year.

9. To have an audit of the financial affairs of the district as required in section 67-450B, Idaho Code. A certified copy of said audit shall be filed with the director on or before February 2 following the audit.

10. To obtain options upon and acquire by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any property, real or personal, and improve any properties acquired; to receive income from such properties and to expend such income in carrying out the purposes and provisions of this chapter; to lease any of its property or interest therein in furtherance of the purposes and provisions of this chapter, provided that no contract or agreement for the acquisition, purchase or repair of personal property involving expenditure in excess of one thousand dollars (\$1,000), shall be entered into without first advertising for sealed competitive bids as herein provided.

11. To have the power of eminent domain for the use of the district in the construction, operation, maintenance and upkeep of its structures, waterways, dikes, dams, basins, or any other use necessary in the carrying out of the provisions of this chapter.

12. To convey rights-of-way and easements for highways, public roads, public utilities, and for other purposes, over district property, as shall be determined by the board to be in the best interests of the district.

13. To convey, by deed, bill of sale, or other appropriate instrument, all of the estate and interest of the district, in any real or personal property. Prior to such sale or conveyance, the board shall have the property appraised by three (3) disinterested residents of the district, which appraisal shall be entered in the minutes of the board. The property may be sold at public auction or at a private sale by sealed competitive bids, as the board shall determine, to the highest cash bidder, provided that in no case shall any property of a district be sold for less than its appraised value. All sales by sealed competitive bids shall be advertised as herein provided.

14. To use natural streams and to improve the same for use as a flood control structure. However, in the event that the use of the natural stream

involves alteration of the stream channel, no such alteration shall be made by the district until such alteration is approved by the director.

15. To enter into contracts or agreements with the United States or any of its officers, agents, or subdivisions, or with the state or any of its officers, agents or political subdivisions, and to cooperate with such governments, persons or agencies in effectuating, promoting and accomplishing the purposes of this chapter, provided that the district has sufficient moneys on hand, or in their budget for the year in which said contract is entered into, to defray the expenditure of funds called for in such contract without the creation of any indebtedness.

Whenever any such contract shall, by its terms, require the expenditure of funds by the district in excess of the moneys on hand or the funds to be realized from their budget for the year in which said contract is entered into, then such contract may not be entered into by the district until ratified by two-thirds (2/3) of the qualified voters voting at an election to be held, subject to the provisions of section 34-106, Idaho Code, for that purpose, according to the provisions of this chapter.

16. To bear its allocated share of the cost of any project resulting from any contract or agreement entered into as provided herein.

17. To take over, administer and maintain pursuant to any agreement or contract entered into in accordance with the provisions of this chapter, any flood control project within or without the boundaries of the district undertaken in cooperation with the United States or any of its agencies, or with the state of Idaho or any of its agencies, or any combinations thereof.

18. To accept donations, gifts and contributions in money, services, or materials, or otherwise, from the United States or any of its agencies, or the state of Idaho or any of its agencies or any combinations thereof, and to expend such moneys, services, or materials in carrying on its operations.

19. To exercise all other powers necessary, convenient or incidental to carrying out the purposes and provisions of the chapter.

**History.**  
1971, ch. 300, § 15, p. 1219; am. 1979, ch. 175, § 1, p. 522; am. 1985, ch. 79, § 1, p. 152; am. 1993, ch. 258, § 1, p. 887; am. 1993, ch. 327, § 21, p. 1186; am. 1993, ch. 387, § 12, p.

1417; am. 1995, ch. 82, § 18, p. 218; am. 1995, ch. 118, § 60, p. 417; am. 1996, ch. 159, § 17, p. 502; am. 2005, ch. 213, § 9, p. 637.

**Compiler's Notes.** Sections 8 and 10 of S.L. 2005, ch. 213 contained repeals.

**42-3116. Sealed bids — When required — Publication of notice.  
[Repealed.]**

**Compiler's Notes.** This section, which comprised 1971, ch. 300, § 16, p. 1219; am. 1979, ch. 175, § 2, p. 522; am. 1993, ch. 258,

§ 2, p. 887, was repealed by S.L. 2005, ch. 213, § 10.

**CHAPTER 32**  
**WATER AND SEWER DISTRICTS**

**SECTION.**  
42-3207. Hearings on petitions — Election  
for organization and directors.  
42-3211. Elections — Terms of office.

**SECTION.**  
42-3212. General powers of board.  
42-3218. Inclusion of property petitioned —  
Hearing — Order — Annexa-

SECTION.

tion of property petitioned —  
Hearing — Order — Annexa-  
tion of property by election —  
Election procedure.

SECTION.

42-3239. Dissolution of a district upon trans-  
fer of assets to municipality.

**42-3207. Hearings on petitions — Election for organization and directors.** — On the day fixed for such hearing or at any adjournment thereof the court shall ascertain from the tax rolls of the county or counties in which the district is located or into which it extends, the total number of taxpayers within the proposed district, who pay a general tax on real property owned by him or her within the district.

If the court finds that no petition has been signed and presented in conformity with this chapter, or that the material facts are not as set forth in the petition filed, it shall dismiss said proceedings and adjudge the costs against the signers of the petition in such proportion as it shall deem just and equitable. No appeal or writ of error shall lie from an order dismissing said proceedings; but nothing herein shall be construed to prevent the filing of a subsequent petition or petitions for similar improvements or for a similar district, and the right so to renew such proceedings is hereby expressly granted and authorized.

Any time after the filing of the petition for the organization of a district and before the day fixed for the hearing thereon, the owner or owners of any real property within the proposed district may file a petition with the court stating reasons why said property should not be included therein, why his land or any part thereof will not be benefited by the proposed district, or should not be embraced in said district and made liable to taxation therefor, and praying that said property be excluded therefrom. Such petition shall be duly verified and shall describe the property sought to be excluded. The court shall conduct a hearing on said petition and shall hear all objections to the inclusion in the district of any lands described in said petition. In case any owner of real estate included in said proposed district shall satisfy the court that his real estate, or any part thereof, has been wrongfully included therein or will not be benefited thereby then the court shall exclude such real estate as will not be benefited.

Upon said hearing, if it shall appear that a petition for the organization of a district has been signed and presented as hereinabove provided, in conformity with this chapter, and the allegations of the petition are true, the court shall, by order duly entered of record, direct that the question of the organization of the district shall be submitted to the qualified electors of the district.

Such election shall be held in conformity with the general election in this state, including chapter 14, title 34, Idaho Code, except that the court shall establish as many election precincts within such proposed district as are deemed necessary, and shall define the boundaries thereof, which precincts and boundaries may thereafter be changed by the county commissioners if the district is organized.

At any time after the filing of the petition herein referred to and before the day fixed for hearing, nominees for the board of directors of the district may



be nominated by the filing of a petition designating the name or names of the nominee or nominees, signed by at least five (5) qualified electors of the district. If upon the hearing as herein provided the court shall order an election for the creation of the district, the court shall also ascertain the names of persons nominated by the board of directors, and shall order that the names of persons whom the court finds to have been properly nominated shall be listed upon a ballot submitted to the electors at such election. In the event the court makes its order providing for such election, it shall prescribe the form of the question and ballot relating to the creation of the district, and also the form of the ballot relating to the election of the directors; provided that all matters may be contained upon one (1) ballot to be submitted to the voters.

At such election the voters shall vote for or against the organization of the district, and for five (5) qualified electors, who shall constitute the board of directors of the district, if organized, one (1) director to act until the first biennial election, two (2) until the second, and two (2) until the third biennial election.

The judges of election shall certify the returns of the election to the district court having jurisdiction. If a majority of the votes cast at said election are in favor of the organization, the district court shall declare the district organized and give it a corporate name by which, in all proceedings, it shall thereafter be known, and designated the first board of directors elected, and thereupon the district shall be a governmental subdivision of the state of Idaho and a body corporate with all the powers of a public or quasi-municipal corporation.

If an order be entered establishing the district, such order shall be deemed final and no appeal or writ of error shall lie therefrom, and the entry of such order shall finally and conclusively establish the regular organization of the said district against all persons except the state of Idaho, in an action in the nature of a writ of quo warranto, commenced by the attorney general within thirty (30) days after said decree declaring such district organized as herein provided, and not otherwise. The organization of said district shall not be directly or collaterally questioned in any suit, action or proceeding except as herein expressly authorized.

**History.**

1947, ch. 152, § 7, p. 364; am. 1955, ch. 63, § 2, p. 122; am. 1957, ch. 29, § 2, p. 40; 1967, ch. 186, § 1, p. 613; am. 1995, ch. 118, § 65, p. 417; am. 2010, ch. 185, § 14, p. 382.

**Compiler's Notes.** The 2010 amendment, by ch. 185, in the fourth paragraph, deleted "at an election to be held, subject to the provisions of section 34-106, Idaho Code, for that purpose, and such order shall appoint (3) qualified electors of the district as judges of said election. The clerk of the court having jurisdiction shall give published notice of the time and place of an election to be held in the district in accordance with the provisions of section 34-106, Idaho Code" from the end; and

in the fifth paragraph, substituted "shall be held in conformity with the general election" for "shall be held and conducted in the same manner as general elections" and substituted "changed by the county commissioners if the district is organized" for "changed by the board of directors of such district if so organized. Such court, and thereafter the board of directors of such district, if so organized, shall appoint (3) judges of election, one (1) of whom shall act as clerk for such election precinct" at the end.

Section 17 of S.L. 2010, ch. 185 provided that the act should take effect on and after January 1, 2011.

**42-3211. Elections — Terms of office.** — (1) On the third Tuesday in May, in the first odd-numbered year after the organization of any district, and on the third Tuesday in May every second year thereafter an election shall be held, which shall be known as the biennial election of the district. Such election shall be held and conducted consistent with the provisions of chapter 14, title 34, Idaho Code.

(2) In districts created under section 42-3202B, Idaho Code, biennial elections shall be held on the third Tuesday in May.

(3) At the first biennial election in any district hereafter organized, and each sixth year thereafter, there shall be elected by the qualified electors of the district, one (1) member of the board to serve for a term of six (6) years; at the second biennial election and each sixth year thereafter, there shall be elected two (2) members of the board to serve for terms of six (6) years, and at the third biennial election, and each sixth year thereafter, there shall be elected two (2) members of the board to serve for terms of six (6) years.

In any election for director, if after the deadline for filing a declaration of intent as a write-in candidate, it appears that the number of qualified candidates who have been nominated is equal to the number of directors to be elected, it shall not be necessary for the candidates to stand for election, and the board of directors shall declare such candidates elected as directors, and the secretary of the district shall immediately make and deliver to such persons certificates of election signed by him and bearing the seal of the district.

#### History.

1947, ch. 152, § 11, p. 364; am. 1957, ch. 29, § 3, p. 40; am. 1980, ch. 257, § 1, p. 670; am. 1995, ch. 118, § 66, p. 417; am. 2009, ch. 341, § 100, p. 993; am. 2010, ch. 185, § 15, p. 382; am. 2011, ch. 11, § 24, p. 24.

**Compiler's Notes.** The 2009 amendment, by ch. 341, in subsection (1) twice substituted "third Tuesday in May" for "first Tuesday in February" and deleted "Except as provided in subsection (2), of this section" from the beginning; in subsection (2), substituted "third Tuesday in May" for "first Tuesday in August"; and in the second paragraph in subsection (3), substituted "county clerk shall conduct the election" for "board shall provide for holding such election" in the second sentence, deleted the former third sentence, which read; "The secretary of the district shall give notice of election by publication, and shall arrange such other details in connection therewith as the board may direct" and, in the present third sentence, substituted "declared as provided in chapter 14, title 34, Idaho Code" for "declared by the board."

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

The 2010 amendment, by ch. 185, substituted "first odd-numbered year" for "second calendar year" in subsection (1).

The 2011 amendment, by ch. 11, added the last sentence in the introductory paragraph; and deleted the first former undesignated paragraph following subsection (3) which read: "Not later than 5:00 p.m. on the sixth Friday preceding the election, nominations may be filed with the secretary of the board and if a nominee does not withdraw his name before the first publication of the notice of election, his name shall be placed on the ballot. The county clerk shall conduct the election and shall appoint judges to conduct it. The returns of the election shall be certified to and shall be canvassed and declared as provided in chapter 14, title 34, Idaho Code. The candidate or candidates, according to the number of directors to be elected, receiving the most votes, shall be elected. Any new member of the board shall qualify in the same manner as members of the first board qualify."

Section 27 of S.L. 2011, ch. 11 declared an emergency retroactively to January 1, 2011. Approved February 23, 2011.

**42-3212. General powers of board.** — For and on behalf of the district the board shall have the following powers:

(a) To have perpetual existence;

(b) To have and use a corporate seal;

(c) To sue and be sued, and be a party to suits, actions and proceedings;

(d) Except as otherwise provided in this chapter, to enter into contracts and agreements, cooperative and otherwise, affecting the affairs of the district, including contracts with the United States of America and any of its agencies or instrumentalities, and contracts with corporations, public or private, municipalities, or governmental subdivisions, and to cooperate with any one (1) or more of them in building, erecting or constructing works, canals, pipelines, sewage treatment plants, and other facilities within or without the district. Except in cases in which a district will receive aid from a governmental agency, procurement of goods or services shall be in accordance with the provisions of chapter 28, title 67, Idaho Code;

(e) To borrow money and incur indebtedness and evidence the same by certificate, notes or debentures, and to issue bonds, in accordance with the provisions of this chapter;

(f) To acquire, dispose of and encumber real and personal property, water, water rights, water and sewage systems and plants, and any interest therein, including leases and easements within or without said district;

(g) To refund any bonded indebtedness of the district without an election; provided, however, that the obligations of the district shall not be increased by any refund of bonded indebtedness. Otherwise, the terms and conditions of refunding bonds shall be substantially the same as those of an original issue of bonds;

(h) To have the management, control and supervision of all the business and affairs of the district, and the construction, installation, operation and maintenance of district improvements therein or therefor;

(i) To hire and retain agents, employees, engineers and attorneys;

(j) To have and exercise the power of eminent domain in the manner provided by law for the condemnation of private property for public use to take any property necessary to the exercise of the powers herein granted, both within and without the district;

(k) To construct and maintain works and establish and maintain facilities across or along any public street or highway, and in, upon, or over any vacant public lands, which public lands are now, or may become, the property of the state of Idaho, and to construct works and establish and maintain facilities across any stream of water or watercourse, and to maintain access to facilities and works by the removal of snow from roads and lands; provided, however, that the district shall promptly restore any such street or highway to its former state of usefulness as nearly as may be, and shall not use the same in such manner as to completely or unnecessarily impair the usefulness thereof;

(l) To fix and from time to time to increase or decrease water and sewer rates, tolls or charges for services or facilities furnished by the district, and to pledge such revenue for the payment of any indebtedness of the district. The board shall fix rates, tolls and charges and the time or times for the payment thereof. All such rates, tolls and charges not paid within thirty (30) days after the date fixed for the payment thereof shall become delinquent; the board shall certify all such delinquent rates, tolls and charges to the tax



collector of the county by the district, not later than the first day of August and shall be, by said tax collector, placed upon the tax roll and collected in the same manner and subject to the same penalties as other district taxes; provided, however, that special assessments certified to the tax collector which are placed on property qualifying for a hardship exemption may be returned to the taxing district from which they originated if the special assessments are not paid within three (3) years. The date of priority of such lien shall be the date upon which such charge becomes delinquent. The board shall shut off or discontinue service for delinquencies in the payment of such rates, tolls or charges, or in the payment of taxes levied pursuant to this chapter, and prescribe and enforce rules and regulations for the connection with and the disconnection from properties of the facilities of the district. For health and sanitary purposes the board shall have the power to compel the owners of inhabited property within a sewer district to connect their property with the sewer system of such district, and upon a failure so to connect within sixty (60) days after written notice by the board so to do the board may cause such connection to be made and a lien to be filed against the property for the expense incurred in making such connection, provided, however, that no owner shall be compelled to connect his property with such system unless a service line is brought, by the district, to a point within two hundred (200) feet of his dwelling place;

(m) To adopt and amend bylaws not in conflict with the constitution and laws of the state for carrying on the business, objects and affairs of the board and of the district;

(n) To have and exercise all rights and powers necessary or incidental to or implied from the specific powers granted herein. Such specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of this chapter.

#### History.

1947, ch. 152, § 12, p. 364; am. 1961, ch. 135, § 1, p. 195; am. 1980, ch. 13, § 1, p. 26; am. 1991, ch. 41, § 1, p. 80; am. 2003, ch. 272, § 1, p. 726; am. 2005, ch. 213, § 11, p. 637.

**Compiler's Notes.** Section 10 of S.L. 2005, ch. 213 contained a repeal and Section 12 is compiled as § 42-4416.

#### Fees.

The city's ordinance's capitalization fee created an equitable buy-in structure, with revenues delegated for repairs, replacement and

maintenance of system components proportionally used by those within the water district's system, and the capitalization fee was reasonable and rationally related to the purpose of the city's regulatory function of insuring clean and safe water for those users of the district's system. The ordinance was adopted pursuant to a valid exercise of police power authority granted to the district by § 42-4201 and this section. *Potts Constr. Co. v. N. Kootenai Water Dist.*, 141 Idaho 678, 116 P.3d 8 (2005).

**42-3218. Inclusion of property petitioned — Hearing — Order — Annexation of property petitioned — Hearing — Order — Annexation of property by election — Election procedure.** — The boundaries of any district organized under the provisions of this chapter may be changed in the manner herein prescribed, but the change of boundaries of the district shall not impair or affect its organization or its rights in or to property, or any of its rights or privileges whatsoever; nor shall it affect or impair or discharge any contract, obligation, lien or charge for or upon which

it might be liable or chargeable had any such change of boundaries not been made.

(a) The owners of real property may file with the board a petition, in writing, praying that such real property be included in the district. The petition shall describe the property owned by the petitioners, and such petition shall be deemed to give assent of the petitioners to the inclusion in said district of the property described in the petition, and shall be accompanied by a reasonable filing fee in an amount to be determined by the board. Such petition must be acknowledged in the same manner that conveyances of land are required to be acknowledged. The secretary of the board shall cause notice of filing of such petition to be given and published in the county in which the property is situated, which notice shall state the filing of such petition, names of petitioners, descriptions of lands mentioned and the prayer of such petitioners; giving notice to all persons interested to appear at the office of the board at the time named in said notice and show cause in writing, if any they have, why the petition should not be granted. The board shall at the time and place mentioned or at such time or times to which the hearing may be adjourned, proceed to hear the petition and all objections thereto, presented, in writing, by any person showing cause why said petition should not be granted. The failure of any person to show cause in writing shall be deemed as an assent on his part to the inclusion of such lands in the district as prayed in the petition. If the petition is granted, the board shall make an order to that effect and, upon approval of said order, the property shall be included in the district.

(b) The territory adjoining or in close proximity to and in the same county with any district created under the provisions of this chapter may be annexed to the district by either of the following procedures: (1) A petition for annexation of real property described in such petition, which has been signed by the owners of not less than sixty percent (60%) of the area in land within the territory to be annexed, and which contains the separate property descriptions of such petitioners, and which is acknowledged in the same manner that conveyances of land are required to be acknowledged, accompanied by a reasonable filing fee in an amount to be determined by the board, may be filed with the board. Upon filing with the board of such a petition, the secretary of the board shall cause notice of filing of such petition to be given and published in the county in which the property is situated, which notice shall state the filing of such petition, names of petitioners, descriptions of lands mentioned and the prayer of such petitioners; giving notice to all persons interested, including the staff and employees of said district and anyone designated by said district, to appear at the office of the board at the time named in said notice and show cause in writing, if any they have, why the petition should not be granted. The board shall at the time and place mentioned or at such time or times to which the hearing may be adjourned, proceed to hear the petition and all objections thereto, presented, in writing, by any person showing cause why said petition shall not be granted. The failure of any person to show cause in writing shall be deemed as an assent to the annexation of such lands into the district as prayed in the petition. The board shall have full discretion to determine if



the petition shall be granted. If the petition is granted, the board shall make an order to that effect. (2) Upon filing with the board of a petition signed by registered voters owning real property residing in the territory to be annexed, who constitute at least twenty percent (20%) of the taxpayers in such territory, praying for an election to determine if annexation shall be made of property designated in such petition, together with payment of a reasonable filing fee in an amount to be determined by the board, the board shall cause notice of filing of such petition to be given and published in the county in which the property is situated, which notice shall state the filing of such petition, names of petitioners, descriptions of lands to be annexed and the prayer of such petition; giving notice to all persons interested, including the staff and employees of said district and anyone designated by said district to appear at the office of the board at the time named in said notice and show cause in writing, if any they have, why the petition shall not be granted. The board shall at the time and place mentioned or at such time or times to which the hearing may be adjourned, proceed to hear the petition and all objections thereto, presented, in writing, by any person showing cause why said petition shall not be granted. The board shall have full discretion to determine if the petition shall be granted, and if such petition is granted, the board shall direct that an election be held, subject to the provisions of section 34-106, Idaho Code. The election shall be conducted in the same manner as general elections in this state, except that the board shall establish as many voting places within such territory proposed to be annexed as are by the board deemed necessary and shall define the boundaries of such voting places. The board shall appoint three (3) judges of election for each voting place, one (1) of whom shall be designated by the board to be the clerk of such election precinct. Each elector shall be registered as required by the general election laws and shall have resided within the area to be annexed for thirty (30) days.

The secretary of the board of directors shall publish notice of the time and place of such election, in accordance with the provisions of section 34-1406, Idaho Code. The notice shall particularly describe the property to be annexed, the name of the district to which the territory is proposed to be annexed, and the terms and conditions prescribed by the board under which the property may be annexed. The notice shall designate the places in the territory where the election will be held, and shall require the voters to cast ballots which shall contain the words:

For annexation to .... District.

Against annexation to .... District.

The judges of the election shall make their return thereof to the board of directors of the district, which shall canvass the returns and render a statement of the results of the election on the records of the board. If the majority of the votes cast favor annexation, the board shall enter an order annexing the property described in the notice of election and the territory shall thereupon become annexed to the district and shall thenceforth be a part of the district.

(c) In all proceedings for inclusion or annexation hereunder, the board shall have the power to prescribe terms and conditions under which said



property may be included in the district, including the condition that such property may only be annexed or included within the district if the property is also established as a water or sewer subdistrict of the district, pursuant to sections 42-3218A through 42-3218D, Idaho Code, and may be required to pay the district its pro rata share of construction costs theretofore incurred by the district pursuant to any bond issue theretofore made or otherwise; provided, however, that such terms and conditions shall be announced by the board at or before the hearing to be held pursuant to subparagraphs (a) and (b) above. Within ten (10) days of the announcement of the terms and conditions under which the property may be included the majority of the petitioners filing petitions under the provisions of subparagraphs (a) or (b) may withdraw their petitions, and no further proceedings shall thereafter be had by the board upon such petitions.

(d) All public streets, roads, highways or alleys upon or within which is situated any part of the operative system or equipment of the district and all public streets, roads, highways and alleys which abut against or touch property annexed or to be annexed to the district, to the extent they abut against or touch such property and are not included in a different district, shall be deemed to be included in the district as a part of the annexation and shall be included in the legal description and map which the district must file in the offices of the county assessor, county recorder and the state tax commission as required by section 63-215, Idaho Code; provided, however, that upon application by the district to the state tax commission, if the commission finds after consultation with the county assessor and the county recorder that exemption from the requirements of this subparagraph (d) will not unduly burden state and local tax administration, the commission by order may exempt the district from the requirements of this subparagraph (d), but the district shall be required to comply with section 63-215, Idaho Code.

#### **History.**

1947, ch. 152, § 18, p. 364; am. 1957, ch. 29, § 4, p. 40; am. 1969, ch. 274, § 1, p. 816; am. 1973, ch. 110, § 1, p. 196; am. 1975, ch. 28, § 1, p. 43; am. 1988, ch. 215, § 2, p. 405; am. 1995, ch. 118, § 67, p. 417; am. 1996, ch. 322, § 39, p. 1029; am. 2006, ch. 167, § 1, p. 515.

**Compiler's Notes.** The 2006 amendment, by ch. 167, substituted "and, upon approval of said order, the" for "and file the same with the clerk of the district court together with a copy of the petition and proof of publication certified by the secretary of the board. The clerk of the district court shall present the same to

the court and upon order of the court the" near the end of subsection (a); in subsection (b), deleted "and file the same with the clerk of the district court together with a copy of the petition and proof of publication certified by the secretary of the board. The clerk of the district court shall present the same to the court and upon order of the court the property shall be included in the district" preceding "(2)"; and deleted "upon the filing of a copy thereof with the clerk of the district court, and upon order of the court," preceding "the territory" in the fourth paragraph in subsection (b).

## **42-3222. Indebtedness of district — Submission of proposition to electorate.**

### **Election Requirement.**

This section required water and sewer districts to submit to voters only proposed obligations that the district would incur; local improvement bonds that would be paid back

by special assessment were not subject to election requirement. The water and sewer district's ordinance to form a local improvement district did not violate the statute and its validity could not be challenged. Mann v.

Granite Reeder Water & Sewer Dist., 143  
Idaho 248, 141 P.3d 1117 (2006).

**42-3239. Dissolution of a district upon transfer of assets to municipality.** — (1) A water, sewer, or combined water and sewer district may transfer to a municipality the assets of the district and dissolve upon a determination that each of the following conditions exists:

- (a) The municipality is capable of providing all the essential functions of the district;
- (b) The municipality has agreed to assume and perform the essential functions of the district;
- (c) The municipality either has or is acquiring sufficient assets, infrastructure, and other resources to perform the essential operations of the district;
- (d) Provisions have been made for the retirement, payment or assumption of any debt, bonds, or other liabilities and obligations of the district;
- (e) Provisions have been made for the liquidation and disbursement of district assets and infrastructure not intended to be transferred to the municipality; and
- (f) Notice of the proposed transfer has been published once a week for two (2) consecutive weeks prior to the hearing in a newspaper of general circulation in the district, including information on the petition for an election on the proposed transfer; and
- (g) An election has been held, if required pursuant to subsection (3) of this section, and the transfer has been approved by a majority of the qualified electors of the district voting on the issue.

(2) Prior to passage of a resolution making the required determination, the district board shall hold a hearing to receive public testimony on the proposed transfer. The public hearing shall be preceded by a notice published once a week for two (2) consecutive weeks preceding the hearing, in a newspaper of general circulation in the district. The notice shall state the date, time and location of the hearing and that the purpose of the hearing is to receive public testimony on the proposed transfer and the method for a petition of qualified electors of the district to be submitted requesting an election to approve the proposed transfer.

(3) After the hearing, the district board may submit the proposed transfer to the qualified electors of the district, or shall take the matter under advisement for a period of thirty (30) days after the hearing. An election shall be held if, prior to the expiration of the thirty (30) day period, a petition signed by not less than ten percent (10%) of the qualified electors of the district is submitted requesting an election on the proposed transfer. If at the end of the thirty (30) day period no petition has been submitted with the required number of signatures, the district board may proceed to adopt the resolution finding the above conditions exist and approving the transfer. An election held pursuant to the provisions of this subsection shall be conducted according to the provisions of section 34-106, Idaho Code, and the proposed transfer shall be approved by a majority of the qualified electors of the district voting on the issue in order for the district board to proceed to adopt a resolution approving the transfer.

(4) In the event the district board and the municipality adopt resolutions finding the above conditions exist and approving the transfer, the district board shall file with the district court in which the district and municipality are located, a certified copy of the district resolution; certified results of the election approving the transfer, if applicable; a certified copy of the resolution of the municipality; and all other necessary documentation requested by the district court. Upon satisfying itself that the required conditions exist, the district court shall enter an order approving the transfer and assumption and establishing the date on which the district shall be dissolved; provided however, upon good cause shown, the court may extend the date upon which the district shall be dissolved. Such order shall be recorded with the county recorder and filed with the county assessor in the counties within which the district is located and filed with the state tax commission within thirty (30) days following the effective date of such dissolution. If an agreement exists between the district and municipality setting the requirements for postdissolution operations, the municipality shall operate the sewer and/or water system(s) in accordance with the agreement.

<b>History.</b> I.C., § 42-3239, as added by 2005, ch. 244, § 1, p. 762.	<b>Compiler's Notes.</b> Section 2 of S.L. 2005, ch. 244 declared an emergency. Approved April 1, 2005.
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CHAPTER 37

WATERSHED IMPROVEMENT DISTRICTS

<b>SECTION.</b> 42-3703. Definitions. 42-3705. Creation of watershed improvement districts. 42-3706. Election of district directors.	<b>SECTION.</b> 42-3707. Appointment, qualifications and tenure of directors. 42-3717. Discontinuance of districts.
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**42-3703. Definitions.** — Whenever used or referred to in this act, unless a different meaning clearly appears from the context, the following terms shall have the following meanings:

- 1. "District" or "watershed improvement district" means a governmental subdivision of this state and a public body corporate and politic organized in accordance with the provisions of this act for the purposes, with the powers, and subject to the restrictions hereinafter set forth.
- 2. "Director" means one (1) of the members of the governing body of a district elected or appointed in accordance with the provisions of this act.
- 3. "Commission" or "state soil and water conservation commission" means the agency created in section 22-2718, Idaho Code.
- 4. "Petition" means a petition filed under the provisions of section 42-3705, Idaho Code, for the creation of a district.
- 5. "Nominating petition" means a petition filed under the provisions of section 42-3706, Idaho Code, to nominate a candidate for the office of director of a watershed improvement district.
- 6. "State" means the state of Idaho.
- 7. "Landowner" includes any person, firm or corporation who shall hold



title to any lands lying within a district organized under the provisions of this act. A contract purchaser who is occupying the land shall be construed as a landowner.

8. "Qualified elector" means any natural person residing within the boundaries of the state of Idaho, owning land within the boundaries of the district, and qualified under the laws of this state to vote in an election by the people.

**History.**

1957, ch. 226, § 3, p. 508; am. 1973, ch. 93, § 1, p. 161; am. 2010, ch. 279, § 28, p. 719.

**Compiler's Notes.** The 2010 amendment, by ch. 279, inserted "and water" in subsection (3).

**42-3705. Creation of watershed improvement districts.** — Any fifteen (15) owners of land lying within the limits of the territory proposed to be organized into a watershed improvement district may file a petition with the state soil and water conservation commission asking that a watershed improvement district be organized to function in the territory described in the petition. In the event that there are less than fifteen (15) persons owning land lying within the limits of the territory proposed to be organized into a district, then and in that case such petition will be deemed sufficient if it contains the signatures of two-thirds (2/3) of the owners of land and representing two-thirds (2/3) of the acreage of land lying within the limits of the said territory. Such petition shall set forth:

1. A description of the territory proposed to be organized as a watershed improvement district, which description shall be deemed sufficient if generally accurate.

2. That there is need, in the interest of the public health, safety, and general welfare for a watershed improvement district to function in the territory described in the petition.

3. The proposed name of said district.

4. A request that the state soil and water conservation commission duly define the boundaries for such district; that an election be held within the territory so defined on the question of the creation of a watershed improvement district in such territory.

After such petition has been filed with the state soil and water conservation commission it shall be the duty of the commission to define by metes and bounds or by legal subdivisions the boundaries of such proposed district, and to hold an election, subject to the provisions of section 34-106, Idaho Code, within the proposed district upon the proposition of the creation of the district, and to cause notice of such election to be given. The question shall be submitted by ballots upon which the words "For creation of a watershed improvement district of the lands below described and lying in the county(ies) of ..., .... and ...." and "Against creation of a watershed improvement district of the lands below described and lying in the county(ies) of ..., .... and ...." shall appear with a square before each proposition and a direction to insert an X mark in the square before one or the other of said propositions as the voter may favor or oppose creation of such district. The ballot shall set forth the boundaries of such proposed district as determined by the state soil and water conservation commission.

All qualified electors who own land within the proposed district shall be eligible to vote in the election.

The state soil and water conservation commission shall pay all expenses of, and supervise the conduct of, such election. The commission shall conduct the election as provided in chapter 14, title 34, Idaho Code. No informality in the conduct of such election or in any matter relating thereto shall invalidate said election or the result thereof if notice thereof shall have been given substantially as herein provided, and said election shall have been fairly conducted.

If the election shall result in a majority of votes being cast in favor of the creation of such proposed district the state soil and water conservation commission shall proceed with the organization of the district in the manner hereinafter provided, to wit:

1. The state soil and water conservation commission shall appoint one (1) director to act with the two (2) directors elected as hereinafter provided, which said directors shall be the governing body of the district.

2. The state soil and water conservation commission shall present to the secretary of state a certificate stating:

- (a) That a petition for the creation of said district was filed with the state soil and water conservation commission.

- (b) The name and residence of the directors appointed by said commission.

- (c) The name which is proposed for said district.

- (d) That an election on such petition was held, and that the majority of votes cast in said election favored the formation of the district.

The secretary of state shall receive, file and record said certificate of the state soil and water conservation commission, and when said certificate shall be filed and recorded the district shall constitute a governmental subdivision of this state and a public body corporate and politic. The secretary of state shall make and issue to the said directors a certificate of the due organization of the said district.

**History.**

1957, ch. 226, § 5, p. 508; am. 1995, ch. 118, § 72, p. 417; am. 2010, ch. 279, § 29, p. 719.

**Compiler's Notes.** The 2010 amendment,

by ch. 279, substituted "state soil and water conservation commission" for "state soil conservation commission" throughout the section.

**42-3706. Election of district directors.** — After the date of issuance of the secretary of state of a certificate of organization of a watershed improvement district nominating petitions may be filed with the state soil and water conservation commission to nominate candidates for directors of such district. The state soil and water conservation commission shall give notice of an election to be held, subject to the provisions of section 34-106, Idaho Code, for the election of two (2) directors for the district. The names of all nominees on behalf of whom such nominating petitions have been filed in the manner provided in section 34-1404, Idaho Code, shall appear arranged in the alphabetical order of the surnames upon ballots with a square before each name, and direction to insert an X mark in the square before any two (2) names to designate the voter's preference. All qualified

electors who own land or reside within the proposed district shall be eligible to vote in said election. The two (2) candidates who shall receive the largest number respectively of the votes cast in such election shall be elected for such district. The state soil and water conservation commission shall pay all the expenses of such election, supervise the conduct thereof, and publish the results thereof in accordance with the provisions of chapter 14, title 34, Idaho Code. All elections in existing districts following the first election shall be conducted by the district directors of the district involved who shall give notice of such elections and who shall bear the cost thereof.

In any election for director, if after the deadline for filing a declaration of intent as a write-in candidate, it appears that the number of qualified candidates who have been nominated for director positions is equal to the number of directors to be elected, it shall not be necessary for the candidates to stand for election, and the board of directors shall declare such candidates elected as directors, and the secretary of the district shall immediately make and deliver to such persons certificates of election.

**History.**

1957, ch. 226, § 6, p. 508; am. 1995, ch. 118, § 73, p. 417; am. 2010, ch. 279, § 30, p. 719.

**Compiler's Notes.** The 2010 amendment,

by ch. 279, substituted "soil and water conservation commission" for "soil conservation commission" three times in the first paragraph.

**42-3707. Appointment, qualifications and tenure of directors. —**

The governing body of the district shall consist of three (3) directors elected or appointed as provided hereinabove. The director appointed by the commission shall be an owner of land within the district and shall be a person who by training and experience is qualified to perform the specialized service which will be required in the performance of his duties hereunder. The term of office of each director shall be four (4) years, except that the director first appointed by the state soil and water conservation commission shall be designated to serve for a term of two (2) years from the date of his appointment. A director shall hold office until his successor has been elected or appointed, and has qualified. Vacancies shall be filled for an unexpired term by a majority of the directors duly qualified and acting at the time the vacancy shall arise. A majority of the directors shall constitute a quorum and the concurrence of a majority in any matter within their duties shall be required for its determination. A director shall receive no compensation for his service, but shall be entitled to expenses, including traveling expenses necessarily incurred in the discharge of his duties.

The directors may employ a secretary, technical experts, and such other employees, permanent and temporary, as they may require, and shall determine their qualifications, duties, and compensation. The directors may employ their own counsel and legal staff. The directors may delegate to their chairman, to one (1) or more directors, or to agents or employees such powers and duties as they may deem proper and necessary. The directors shall furnish to the state soil and water conservation commission, upon request, copies of such documents or other information concerning the directors' activities as said commission may require in the performance of its duties under this chapter. The directors shall provide for the keeping of a



record of all proceedings, resolutions, regulations and orders issued or adopted; shall provide for an annual audit of its accounts, and shall provide for the execution of surety bonds by any employee or officer who shall be entrusted with funds or property of the district.

**History.**

1957, ch. 226, § 7, p. 508; am. 2010, ch. 279, § 31, p. 719.

**Compiler's Notes.** The 2010 amendment, by ch. 279, substituted "soil and water conser-

vation commission" for "soil conservation commission" in both paragraphs; and in the fourth sentence in the second paragraph, substituted "this chapter" for "this act."

**42-3717. Discontinuance of districts.** — At any time after three (3) years after the organization of a district under the provisions of this chapter any twenty-five (25) qualified electors or owners of land lying within the boundaries of such district or, if less than twenty-five (25) owners of land or qualified electors reside within the boundaries of such district it would be deemed sufficient if two-thirds (2/3) of the resident group, may file a petition with the state soil and water conservation commission requesting that the operations of the district be terminated and the existence of the district discontinued. After such petition has been received by the state soil and water conservation commission it shall give notice of the holding of an election, subject to the provisions of section 34-106, Idaho Code, which the said commission shall supervise and govern the conduct in accordance with the provisions of chapter 14, title 34, Idaho Code. The question to be submitted by ballots upon which the words "For terminating the existence of the (name of the watershed improvement district to be here inserted)" and "Against terminating the existence of the (name of the watershed improvement district to be inserted here)" shall appear with a square before each proposition, and a direction to insert an X mark in the square before one or the other of said propositions as the voter may favor or oppose discontinuance of such district. All qualified electors who own land or reside within the proposed district shall be eligible to vote in said election. No informality in the conduct of such election or in any matters relating thereto shall invalidate said election or the result thereof if notice thereof shall have been given as herein provided, and said election shall have been fairly conducted.

The state soil and water conservation commission shall certify the result of such election to the directors of the district. If the state soil and water conservation commission shall certify that a majority of the votes cast in said election favor the discontinuance of the existence of the district, the directors of the district shall forthwith proceed to terminate the affairs of the district. Any moneys remaining in the treasury of said district following the winding up of the affairs of the district shall be paid by the directors into the state treasury. The directors shall file an application duly verified with the secretary of state for the discontinuance of such district which shall recite that the affairs of the district have been wound up, and shall set forth a full accounting of the winding up of the affairs of said district. The secretary of state shall issue to the directors a certificate of dissolution, and shall record said certificate in his office.

The state soil and water conservation commission shall not entertain

petitions for the discontinuance of any district nor conduct elections upon such petitions more often than once in three (3) years.

**History.**

1957, ch. 226, § 17, p. 508; am. 1995, ch. 118, § 75, p. 417; am. 2010, ch. 279, § 32, p. 719.

**Compiler's Notes.** The 2010 amendment,

by ch. 279, substituted "state soil and water conservation commission" for "state soil conservation commission"; and near the end of the first sentence in the first paragraph, substituted "requesting" for "praying."

## CHAPTER 38

### ALTERATION OF CHANNELS OF STREAMS

**SECTION.**

42-3802. Definitions.

42-3806. Existing rights unaffected — Where permit not required.

**SECTION.**

42-3809. Penalty for violation — Enforcement procedure — Injunctive relief.

**42-3802. Definitions.** — Whenever used in this act, the term:

(a) "Person" means any individual, partnership, company, corporation, municipality, county, state or federal agency, or other entity proposing to alter a stream channel.

(b) "Alter" means to obstruct, diminish, destroy, alter, modify, relocate, or change the natural existing shape or direction of water flow of any stream channel within or below the mean high watermark thereof.

(c) "Board" means the Idaho water resource board.

(d) "Stream channel" means a natural watercourse of perceptible extent, with definite bed and banks, which confines and conducts continuously flowing water. Ditches, canals, laterals and drains that are constructed and used for irrigation or drainage purposes are not stream channels.

(e) "Department" means the Idaho department of water resources.

(f) "Director" means the director of the Idaho department of water resources.

(g) "Plans" means maps, sketches, engineering drawings, word descriptions and specifications sufficient to describe the extent, nature and location of the proposed stream channel alteration and the proposed method of accomplishing same.

(h) "Mean high watermark" means a water level corresponding to the natural or ordinary high watermark and is the line which the water impresses on the soil by covering it for sufficient periods of time to deprive the soil of its terrestrial vegetation and destroy its value for commonly accepted agricultural purposes.

**History.**

1971, ch. 337, § 2, p. 1304; am. 1974, ch. 20, § 33, p. 533; am. 1994, ch. 292, § 1, p. 912; am. 2004, ch. 191, § 2, p. 601.

**Compiler's Notes.** The words "this act" refer to S.L. 1971, ch. 337, as amended, compiled as §§ 42-3801 to 42-3810.

Sections 1 and 3 of S.L. 2004, ch. 191 are compiled as §§ 42-110 and 42-3806, respectively.

Section 4 of S.L. 2004, ch. 191 declared an emergency. Approved March 23, 2004.

**42-3806. Existing rights unaffected — Where permit not required.** — This act shall not operate or be so construed as to impair,

diminish, control or divest any existing or vested water rights acquired under the laws of the state of Idaho or the United States, nor to interfere with the diversion of water from streams under existing or vested water right or water right permit for irrigation, domestic, commercial or other uses as recognized and provided for by Idaho water laws.

No permit shall be required by the state or any agency or political subdivision thereof, from a water user or his agent to clean, maintain, construct in, or repair any stream channel, diversion structure, canal, ditch, drain or lateral. No permit shall be required by the state or any agency or political subdivision thereof, from a water user or his agent to remove any obstruction from any stream channel, if such obstruction interferes with, or is likely to interfere with, the delivery of, or use of, water under any existing or vested water right, or water right permit.

Nothing in this section shall be construed to affect the provisions of chapter 10, title 46, Idaho Code, or to exempt a water user or his agent from compliance with any applicable local flood plain ordinance adopted pursuant to section 46-1022, Idaho Code.

**History.**

1971, ch. 337, § 6, p. 1304; am. 2004, ch. 191, § 3, p. 601; am. 2011, ch. 261, § 1, p. 707.

**Compiler's Notes.** The words "this act" refer to S.L. 1971, ch. 337, as amended, compiled as §§ 42-3801 to 42-3810.

Section 2 of S.L. 2004, ch. 191 is compiled as § 42-3802.

The 2011 amendment, by ch. 261, in the second paragraph, twice inserted "by the state or any agency or political subdivision thereof" and added the last paragraph.

Section 4 of S.L. 2004, ch. 191 declared an emergency. Approved March 23, 2004.

**42-3809. Penalty for violation — Enforcement procedure — Injunctive relief.** — (1) Any person who violates any of the provisions of this chapter, any regulation, rule, order or standard of the board promulgated pursuant to section 42-3803, Idaho Code, or of any order or condition of approval of the director issued pursuant thereto, where a copy of the order has been served upon said person in person or by certified mail and said person fails to comply therewith within the time therein provided, or within ten (10) days of such service if not otherwise provided, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred fifty dollars (\$150) nor more than five hundred dollars (\$500); provided further, that each day such violation of an order or condition of approval has taken place shall constitute a separate offense punishable by a fine of not less than one hundred fifty dollars (\$150) for each day until such activity is abated or voluntarily ceased. Any stream channel alteration engaged in by any person without approval having been obtained therefor as prescribed in this act is hereby declared to be a public nuisance and shall be subject to proceedings for immediate abatement.

(2) When the director of the department of water resources determines that any person is in substantial violation of any provision of this chapter or any rule, permit, certificate, condition of approval or order issued or promulgated pursuant to this chapter, the director may commence an administrative enforcement action by issuing a written notice of violation in accordance with the provisions of section 42-1701B, Idaho Code. Provided however, that no civil or administrative proceeding may be brought to



recover for a violation of any provision of this chapter or a violation of any rule, permit or order issued or promulgated pursuant to this chapter, more than two (2) years after the director had knowledge or ought reasonably to have had knowledge of the violation. The director shall have authority and it shall be his duty to seek a temporary injunction from the appropriate district court to restrain a person from altering a stream channel until approval therefor has been obtained by the person as provided in this act.

#### History.

1971, ch. 337, § 9, p. 1304; am. 1972, ch. 137, § 2, p. 303; am. 1974, ch. 20, § 37, p. 533; 1978, ch. 327, § 1, p. 822; am. 1980, ch. 331, § 2, p. 854; am. 1994, ch. 292, § 3, p. 912; am. 1998, ch. 173, § 10, p. 595; am. 2012, ch. 121, § 1, p. 337.

**Compiler's Notes.** The term "this act" refers to S.L. 1971, ch. 337, which is compiled as §§ 42-3801 to 42-3810.

The 2012 amendment, by ch. 121, added the second sentence in subsection (2).

**Cross Reference.** Department of water resources, § 42-1701 et seq.

## CHAPTER 39

### INJECTION WELLS

#### SECTION.

42-3902. Definitions.

42-3903. Deep injection wells — Construction — Modification — Use — Permit required.

42-3904. Application for permit — Owner — Operator responsible — Notice of construction form.

42-3905. Fees — Transmitted to state treasurer.

42-3908. Permit approving construction and

#### SECTION.

use — Conditions — Rejection of application.

42-3911. Failure to obtain required permit or submit required information — Penalty.

42-3912. Drillers — Must be licensed — Approved permits — Certified copies.

42-3913. Minimum standards — Rules and regulations — Adoption.

#### 42-3902. Definitions. — Whenever used in this chapter:

(1) "Aquifer" means any geologic formation that will yield water to a well in sufficient quantities to make production of water from the formation feasible for beneficial use, except when the water in such formation results solely from injection through a deep or shallow injection well.

(2) "Class II injection well" means a deep injection well used to inject fluids:

(a) Which are brought to the surface in connection with natural gas storage operations, or conventional oil or natural gas production and may be commingled with waste waters from gas plants, dehydration stations, or compressor stations which are an integral part of production operations, unless those waters are classified as a hazardous waste at the time of injection;

(b) For enhanced recovery of oil or natural gas; or

(c) For storage of hydrocarbons which are liquid at standard temperature and pressure.

(3) "Deep injection well" means an injection well which is more than eighteen (18) feet in vertical depth below land surface.

(4) "Director" means the director of the department of water resources.

(5) "Drinking water source" means an aquifer which contains water having less than ten thousand (10,000) mg/l total dissolved solids and has

not been exempted from this designation by the director of the department of water resources.

(6) "Fluid" means any material or substance which flows or moves whether in a semisolid, liquid, sludge, gaseous or any other form or state.

(7) "Formation" means a body of consolidated or unconsolidated rock characterized by a degree of lithologic homogeneity which is mappable at the earth's surface or traceable in the subsurface.

(8) "Hazardous waste" means any fluid or combination of fluids, excluding radioactive wastes, which because of quantity, concentration or characteristics (physical, chemical or biological) may:

(a) Cause or significantly contribute to an increase in deaths or an increase in serious, irreversible or incapacitating reversible illness; or

(b) Pose a substantial threat to human health or to the environment if improperly treated, stored, disposed of, or managed. Such wastes include, but are not limited to, materials which are toxic, corrosive, ignitable, or reactive, or materials which may have mutagenic, teratogenic, or carcinogenic properties, but do not include solid or dissolved material in domestic sewage or solid or dissolved material in irrigation return flows.

(9) "Injection" means the subsurface emplacement of fluids through an injection well, but excludes the following:

(a) The underground injection of natural gas for purposes of storage; and

(b) The underground injection of fluids or propping agents, other than diesel fuels, pursuant to hydraulic fracturing operations related to oil, gas or geothermal production activities.

(10) "Injection well" means any feature that is operated to allow injection which also meets at least one (1) of the following criteria:

(a) A bored, drilled or driven shaft whose depth is greater than the largest surface dimension;

(b) A dug hole whose depth is greater than the largest surface dimension;

(c) An improved sinkhole; or

(d) A subsurface fluid distribution system.

Provided however, that "injection well" does not mean or include any well drilled for oil, gas or geothermal production activities, other than one into which diesel fuels are injected pursuant to hydraulic fracturing operations.

(11) "Irrigation waste water" means excess surface water from agricultural fields generated during any agricultural operation, including runoff of irrigation tailwater, as well as natural drainage resulting from precipitation, snowmelt and floodwaters.

(12) "Licensed driller" means any person holding a valid license to drill water wells in Idaho as provided and defined in section 42-238, Idaho Code.

(13) "Operate" means to allow fluids to enter an injection well by action or by inaction of the operator.

(14) "Operator" means any individual, group of individuals, partnership, company, corporation, municipality, county, state agency, taxing district or federal agency who operates or proposes to operate any injection well.

(15) "Owner" means any individual, group of individuals, partnership, company, corporation, municipality, county, state agency, taxing district, or federal agency owning land on which any injection well exists or is proposed to be constructed.

(16) "Radioactive material" means any material, solid, liquid or gas which emits radiation spontaneously.

(17) "Radioactive waste" means any fluid which contains radioactive material in concentrations which exceed those established for discharges to water by 10 CFR 20.

(18) "Shallow injection well" means an injection well which is less than or equal to eighteen (18) feet in vertical depth below land surface.

(19) "Sanitary waste" means any fluid generated through residential (domestic) activities, such as food preparation, cleaning and personal hygiene. The term does not include industrial, municipal, commercial or other nonresidential process fluids.

(20) "Surface runoff water" means runoff water from the natural ground surface and cropland. Runoff from urbanized areas, such as streets, parking lots, airports, and runoff from animal feedlots, agricultural processing facilities and similar facilities are not included within the scope of this term.

#### History.

1971, ch. 301, § 2, p. 1235; am. 1984, ch. 155, § 2, p. 370; am. 2001, ch. 103, § 84, p. 253; am. 2007, ch. 83, § 9, p. 221; am. 2011, ch. 110, § 2, p. 287; am. 2012, ch. 111, § 5, p. 302; am. 2013, ch. 44, § 1, p. 91.

**Compiler's Notes.** The 2007 amendment, by ch. 83, in subsection (15), deleted "in an unrestricted area" following "discharges to water," and substituted "by 10 CFR 20" for "by the board of environmental quality under the provisions of chapter 30, title 39, Idaho Code."

The 2011 amendment, by ch. 110, in subsection (1), substituted "a deep or shallow injection well" for "a waste disposal and injection well"; added present subsection (2) and redesignated the subsequent subsections accordingly; in present subsection (8), added "through an injection well"; rewrote present subsection (9) to the extent that a detailed comparison is impracticable; rewrote present subsection (10), which formerly read: "Irrigation waste water means surplus water diverted from irrigation but not applied to crops or runoff of surplus water from the cropland as a result of irrigation"; in present

subsection (18), inserted "residential" and added the last sentence; and deleted former subsection (19), which was the definition for "Waste disposal and injection well."

The 2012 amendment, by ch. 111, in subsection (8), added "but excludes the following" in the introductory paragraph and added paragraphs (a), (b), and (c); and added the proviso at the end of subsection (9).

Section 7 of S.L. 2012, ch. 111 declared an emergency. Approved March 23, 2012.

The 2013 amendment, by ch. 44, added subsection (2) and redesignated former subsections (2) to (19) as present subsections (3) to (20).

#### Violation of Federal Law.

Government was not required to prove, as an element 42 U.S.C.S. § 300h-2(b)(2), that injection of the water would have an adverse impact on an underground source of drinking water; rather, it had only to prove that defendant willfully failed to comply with a requirement of Idaho's underground injection control program. *United States v. King*, 660 F.3d 1071 (9th Cir. 2011), cert. denied, — U.S. —, 132 S. Ct. 2740, 183 L. Ed. 2d 615 (2012).

**42-3903. Deep injection wells — Construction — Modification — Use — Permit required.** — No new deep injection well shall be constructed after the effective date of this act unless a permit therefor has been issued by the director of the department of water resources. No deep injection well existing on the effective date of this act shall be modified after the effective date of this act unless a permit therefor has been issued by the director. No deep injection well existing on the effective date of this act shall continue to be used and maintained after January 1, 1974, unless a permit therefor has been issued by the director.



**History.**

1971, ch. 301, § 3, p. 1235; am. 1974, ch. 20, § 38, p. 533; am. 2011, ch. 110, § 3, p. 287.

**Compiler's Notes.** The 2011 amendment, by ch. 110, in the section heading, substituted "Deep injection wells" for "Waste disposal and injection wells"; and throughout the section, substituted "deep injection well" for "waste disposal and injection well."

an element 42 U.S.C.S. § 300h-2(b)(2), that injection of the water would have an adverse impact on an underground source of drinking water; rather, it had only to prove that defendant willfully failed to comply with a requirement of Idaho's underground injection control program. *United States v. King*, 660 F.3d 1071 (9th Cir. 2011), cert. denied, — U.S. —, 132 S. Ct. 2740, 183 L. Ed. 2d 615 (2012).

**Violation of Federal Law.**

Government was not required to prove, as

**42-3904. Application for permit — Owner — Operator responsible — Notice of construction form.** — (1) The owner or operator shall make application to the director of the department of water resources for a permit as provided in this chapter. When a facility is owned by one (1) person but operated by another, it shall be the operator's duty to obtain a permit. Such application shall be upon forms furnished by the director which shall require information concerning the location and description of the injection well, the quantity, quality, and nature of the material being or proposed to be injected, the description of the underground formation and aquifer into which the material is proposed to be or is being injected, the availability of alternative sources of disposal, and such other information as will enable the director to determine the effect of injection upon the quality of the ground water, the effect upon the beneficial uses of said ground water, the effect upon the public health and the effect upon public benefits derived therefrom, if any. Such application shall be submitted complete with fees as provided in this chapter. Mine shafts used for the disposal of wastes resulting from the mining and concentration process shall be exempt from the permit requirements of this chapter until an inventory and assessment of the contamination potential posed by such operation is completed.

(2) Owners of new shallow injection wells drilled after July 1, 1997, shall submit a notice of construction form to the department of water resources no later than thirty (30) days prior to commencement of construction for each new well. The notice of construction form shall be submitted with the fee as provided in this chapter on a form provided by the department of water resources.

**History.**

1971, ch. 301, § 4, p. 1235; am. 1974, ch. 20, § 39, p. 533; am. 1984, ch. 155, § 5, p. 370; am. 1997, ch. 208, § 1, p. 624; am. 2011, ch. 110, § 4, p. 287.

by ch. 110, deleted the former last sentence in subsection (2), which read: "New shallow injection wells used for disposal of storm water from building roof drains are exempt from the notice of construction filing requirements and fees of this chapter."

**Compiler's Notes.** The 2011 amendment,

**42-3905. Fees — Transmitted to state treasurer.** — (1) Fees provided for in this section shall accompany all applications and notice of construction forms. No such application or notice of construction form shall be accepted unless accompanied by a filing fee as provided in this section. A separate application shall be filed for each deep injection well and each shallow injection well for which a permit is required by the rules adopted by the water resource board. The filing fee for each deep injection well

requiring a permit shall be two thousand five hundred dollars (\$2,500) for a class II injection well and one hundred dollars (\$100) for all other deep injection wells, payable to the department of water resources.

(2) The notice of construction form for each new shallow injection well shall be accompanied by a fee of seventy-five dollars (\$75.00) payable to the department of water resources.

(3) All fees received under the provisions of this chapter are deemed to be nonrefundable and shall be transmitted to the state treasurer for deposit in the water administration fund as established under the provisions of section 42-238a, Idaho Code, except that fees submitted with applications that do not require a permit shall be returned to the applicant. Fees collected may be used by the director of the department of water resources to carry out the provisions of this chapter.

**History.**

1971, ch. 301, § 5, p. 1235; am. 1972, ch. 180, § 1, p. 460; am. 1974, ch. 20, § 40, p. 533; am. 1984, ch. 155, § 6, p. 370; am. 1997, ch. 208, § 2, p. 624; am. 2011, ch. 110, § 5, p. 287; am. 2013, ch. 44, § 2, p. 91.

**Compiler's Notes.** The 2011 amendment, by ch. 110, substituted "deep injection well"

for "waste disposal and injection well" in the second sentence in subsection (1).

The 2013 amendment, by ch. 44, rewrote the last sentence of subsection (1), which formerly read: "The filing fee for each injection well requiring a permit shall be one hundred dollars (\$100) payable to the department of water resources."

**42-3908. Permit approving construction and use — Conditions — Rejection of application.** — If the director of the department of water resources determines the use of the proposed or existing injection well will not affect the rights of others to use water for beneficial purposes shall issue a permit approving the construction, modification or continued operation of such well. Such permit shall contain conditions, if any, determined to be necessary to protect the public interest in the ground water resource including, but not limited to, the method and manner of operation of the injection well, the period during which the injection well may be operated, a date when such permit shall expire, and periodic reports to the department of water resources of the quality and quantity of the fluids injected. No deep injection well or shallow injection well, as may be required by rules and regulations adopted under this chapter, shall be used unless a valid permit is in effect in accordance with this chapter.

The director shall require, as a condition of every class II injection well permit, that every person who engages in the construction, modification or operation of a well provides evidence of good and sufficient security in the form of a bond, letter of credit or other surety acceptable to the director that ensures that the applicant performs the duties required pursuant to this chapter and properly decommission any well covered by such permit. Good and sufficient security for each injection well shall be in the amount of ten thousand dollars (\$10,000) plus one dollar (\$1.00) per foot of depth. The security shall be conditioned upon the performance of the owner's or operator's duty to comply with the rules of the water resource board with respect to the construction, modification, operation, plugging and decommissioning of each well. The security shall remain in full force and effect until the plugging and decommissioning of the well is approved by the

director or the security is released by the director. Well decommissioning shall include reclamation of the well site so that the site is left in a stable, noneroding condition with no impact to any ground water or surface water sources of the state. The director may require additional security of an owner or operator given sufficient reason, such as noncompliance, unusual conditions or other circumstances that suggest a particular well has potential risk or liability in excess of that normally expected.

If the director of the department of water resources determines the use of the proposed or existing injection well will interfere or is interfering with the right of the public to withdraw water for beneficial uses, and the director finds there are no overriding needs existing to justify the use of the injection well, the director may reject the application and forward notice of such rejection to the owner or operator by certified mail.

**History.**

1971, ch. 301, § 8, p. 1235; am. 1974, ch. 20, § 43, p. 533; am. 1984, ch. 155, § 9, p. 370; am. 2011, ch. 110, § 6, p. 287; am. 2013, ch. 43, § 1, p. 90.

**Compiler's Notes.** The 2011 amendment,

by ch. 110, substituted "No deep injection well" for "No waste disposal and injection well" in the last sentence in the first paragraph.

The 2013 amendment, by ch. 43, added the second paragraph.

**42-3911. Failure to obtain required permit or submit required information — Penalty.** — Any owner or operator who causes to be constructed or consents either expressly or impliedly to the construction of a new deep injection well without having first obtained a permit therefor from the director of the department of water resources as provided in this chapter shall be guilty of a misdemeanor. Any owner or operator who causes an existing deep injection well to be modified or consents either expressly or impliedly to the modification of an existing deep injection well without having first obtained a permit therefor from the director of the department of water resources as provided in this chapter shall be guilty of a misdemeanor. From and after January 1, 1974, any owner or operator who continues to operate and maintain or consents either expressly or impliedly to the continued operation and maintenance of an existing deep injection well without having first obtained a permit therefor from the director of the department of water resources as provided in this chapter shall be guilty of a misdemeanor; provided, that no misdemeanor shall occur where an owner or operator applied for a permit before January 1, 1974, and the director of the department of water resources has not approved or rejected said application. Any owner or operator of a proposed or existing injection well who violates the rules and regulations of the water resource board shall be guilty of a misdemeanor. Each and every day that such activity is carried on in violation of this section shall constitute a separate and distinct offense.

**History.**

1971, ch. 301, § 11, p. 1235; am. 1974, ch. 20, § 46, p. 533; am. 1984, ch. 155, § 12, p. 370; am. 2011, ch. 110, § 7, p. 287.

**Compiler's Notes.** The 2011 amendment, by ch. 110, throughout the section, substituted "deep injection well" for "waste disposal and injection well."

**42-3912. Drillers — Must be licensed — Approved permits — Certified copies.** — It shall be unlawful for any person not a licensed



driller to construct a new deep injection well or modify an existing deep injection well, except that a driller's license is not required for the construction of a driven mine shaft or dug hole for the purposes of this chapter. All licensed drillers shall obtain a certified copy of the approved permit from the director of the department of water resources prior to construction of any new deep injection well or prior to the modification of any existing deep injection well. Failure by a licensed driller to comply with this section shall constitute cause for revocation of a well driller's license in accordance with section 42-238, Idaho Code.

**History.**  
1971, ch. 301, § 12, p. 1235; am. 1974, ch. 20, § 47, p. 533; am. 1984, ch. 155, § 13, p. 370; am. 2011, ch. 110, § 8, p. 287.

**Compiler's Notes.** The 2011 amendment, by ch. 110, throughout the section, substituted "deep injection well" for "waste disposal and injection well."

**42-3913. Minimum standards — Rules and regulations — Adoption.** — The water resource board shall adopt minimum standards for the construction or abandonment of deep injection wells. Such standards shall require each deep injection well to be so constructed as to protect the ground water of this state from waste and unreasonable contamination. Each licensed well driller or operator will be furnished with a copy of the adopted standards, and will be required to construct each deep injection well drilled after the effective date of said rules and regulations in compliance with the determined standards. Failure by a licensed driller to comply with such standards shall constitute cause for revocation of the well driller's license in accordance with section 42-238, Idaho Code.

The water resource board shall also adopt minimum standards for the construction and abandonment of shallow injection wells. Any person who constructs or abandons a shallow injection well without complying with such standards shall be guilty of a misdemeanor.

**History.**  
1971, ch. 301, § 13, p. 1235; am. 1974, ch. 20, § 48, p. 533; am. 1984, ch. 155, § 14, p. 370; am. 2011, ch. 110, § 9, p. 287.

**Compiler's Notes.** The 2011 amendment, by ch. 110, throughout the first paragraph, substituted "deep injection well" for "waste disposal and injection well" or similar language.

CHAPTER 40

GEOHERMAL RESOURCES ACT

SECTION.	SECTION.
42-4003. Permits — Application — Fee — Exceptions.	42-4005. Permit — Issuance — Sufficient security — Review — Appeal.
42-4004. Processing of applications — Investigations — Hearings.	

**42-4003. Permits — Application — Fee — Exceptions.** — (1) Any person who, as owner or operator, proposes to construct a well or to alter a well or to construct or to alter an injection well shall first apply to the director for a geothermal resource well permit, except as provided in subsection (2) of this section.

(2) The use of ground water classified as a geothermal resource or material medium for the development and operation of oil and gas wells permitted under section 47-320, Idaho Code, shall not be subject to the provisions of this chapter. However, the director of the department of water resources may initiate a contested case in accordance with the provisions of chapter 52, title 67, Idaho Code, and the rules of procedure promulgated by the department, if the department has reason to believe that an oil and gas well will cause, is causing or has caused, significant negative impacts to pressure, temperature, quality necessary for beneficial use or quantity of water available to water rights existing at the time of the development of the oil and gas well or to a geothermal resource that can be beneficially used. The evidence of causation must come from the department or be credible information from a water right holder or a geothermal resource permit holder existing at the time of the development of the oil and gas well. It shall be the burden of the entity operating the oil and gas well to establish that it will not cause, is not causing and has not caused significant negative impacts to pressure, temperature, quality necessary for beneficial use or quantity of water available to existing water rights existing at the time of the development of the oil and gas well or to geothermal resource that can be beneficially used. If the director determines that the well will cause, is causing or has caused significant negative impacts to pressure, temperature, quality necessary for beneficial use or quantity of water available to a water right existing at the time of the development of the oil and gas well or to a geothermal resource that can be beneficially used, the director may order the operator to take measures to mitigate those impacts.

(3) Such application required pursuant to subsection (1) of this section shall set out the following information on a form or forms prescribed by the department:

(a) The name of any person making the application; if such person is a partnership, joint-venture, association, or other unincorporated group of corporate or natural persons, the names and places of domicile of each of the constituent persons who have general partnership responsibility and authority for and in such unincorporated group of persons; if any person named on a permit application is a corporation, its place of domicile, the names and places of domicile of its principal executive officers, and the names and places of domicile of any person or persons owning a thirty percent (30%) or greater interest, whether legal, beneficial, or a combined legal and beneficial interest, in such corporate person; if the applicant is making an application as an agent for any other person, it shall be clearly so stated and any person who is the applicant's principal shall be subject to each and all of the disclosure requirements of this subsection; for purposes of this subsection, the domicile of a corporation is at all of the following:

- (i) The place of incorporation;
- (ii) The principal place of business;
- (iii) The place, by city and state, of the home office, and in any instance where domicile is required to be disclosed all of these places shall be specified.

(b) The location of the proposed well; and/or the injection well described particularly by the quarter-quarter section according to the township and range system of the United States public lands survey.

(c) The length, size, type, and thickness of casing proposed to be used in such well and/or such injection well and any other devices or techniques to be used in the drilling, operation, and maintenance of such well and/or injection well for the purpose of conserving geothermal resources and their availability, avoiding waste and for the protection of other subsurface natural resources.

(d) The character and composition of the material expected to be derived from such well.

(e) The means proposed to be used to contain and manage the material expected to be derived from such well or injected into such injection well in order to avoid unreasonable damage to life, property, or surface and atmospheric natural resources.

(f) Whether such well or such injection well is proposed to be constructed as a part of a program for exploration or for development of an already explored geothermal resource area.

(g) Such other information as the director may determine to be necessary for the administration of this chapter.

(4) Any application for a permit to construct a well which is made pursuant to this section, if the construction or operation of such well will involve the use of water, or if such well may be expected to yield water to be used, for any beneficial purpose, other than as a mineral source, an energy source, or otherwise as a material medium, shall be accompanied by an application to appropriate the public waters of this state in the form prescribed in chapter 2, title 42, Idaho Code, and by rules adopted pursuant thereto, and such application to appropriate the public waters shall be governed in all respects by that chapter.

(5) Any application for a permit made pursuant to this section shall be accompanied by a filing fee of:

(a) Two hundred dollars (\$200) if for a well; or

(b) One hundred dollars (\$100) for an injection well;

and no application shall be accepted and filed by the director until such filing fee has been deposited with him. All moneys received under the provisions of this chapter shall be deposited with the state treasurer in the water administration fund as provided in section 42-238a, Idaho Code.

(6) No person shall construct or alter a well or an injection well without having first secured a permit therefor; provided however, that the director may, by general rule adopted pursuant to chapter 52, title 67, Idaho Code, exempt specific categories of wells or injection wells otherwise embraced by this chapter upon a finding that the purposes of this chapter do not require that such wells be subject to the permit requirement of this section.

(7) Nothing in this chapter shall be construed as affecting any valid, vested water rights for water in use on or before July 1, 1987.

(8) The director shall have the authority to and may designate any area of the state a "geothermal area" when the director finds or has reason to believe that such designation is necessary to protect the geothermal



resource from waste and to protect other resources of the state from contamination or waste.

(9) No person shall drill a well for any purpose to a depth of three thousand (3,000) feet or more below land surface in a designated “geothermal area” without first obtaining a permit under the provisions of this section. Such permit shall be in addition to any permit required by other provisions of law.

(10) The owner of any well constructed or being constructed pursuant to section 47-320, Idaho Code, who encounters a geothermal resource, and who intends or desires to utilize such resource, shall make application for a geothermal permit as required under this section, provided however, that no additional filing fee shall be required.

(11) A geothermal resource shall be utilized primarily for its heat value. Usage of a geothermal resource primarily for some reason other than its heat value shall not be deemed a beneficial use of the resource.

**History.**

1972, ch. 301, § 4, p. 749; am. 1974, ch. 20, § 51, p. 533; am. 1974, ch. 297, § 2, p. 1753; am. 1987, ch. 347, § 15, p. 741; am. 2007, ch. 189, § 1, p. 554; am. 2012, ch. 111, § 6, p. 302.

**Compiler’s Notes.** The 2007 amendment, by ch. 189, in the introductory paragraph in subsection (a)(1), twice substituted “this subsection” for “this subdivision”; in subsection (b), substituted “rules” for “regulations”; in subsections (c)(1) and (c)(2), doubled the dollar amounts for fees; in subsections (c)(2) through (e), substituted “chapter” for “act”; and in subsection (d), deleted “or regulation” following “general rule.”

The 2012 amendment, by ch. 111, changed the designation scheme throughout the section; added “except as provided in subsection (2) of this section” at the end of subsection (1); added present subsection (2), renumbering the subsequent subsections accordingly; and added “required pursuant to subsection (1) of this section” near the beginning of subsection (3).

Section 4 of S.L. 2007, ch. 189 declared an emergency. Approved March 26, 2007.

Section 7 of S.L. 2012, ch. 111 declared an emergency. Approved March 23, 2012.

**42-4004. Processing of applications — Investigations — Hearings.** — (a) Upon receipt of an application made pursuant to section 42-4003, Idaho Code, it shall be the duty of the director to examine such application to ascertain, within thirty (30) days of receipt, if it sets forth all information required by that section and all the information necessary for the director to make the determination required by this section. If upon such examination the application is found to be defective, the director shall return such application for correction, or notify the applicant that such application is defective, and the applicant may correct such application within thirty (30) days or make a new application. All applications which comply with the provisions of this chapter and with the rules of the water resource board shall be accepted by the director and numbered in a manner which will aid in their identification.

(b) Within thirty (30) days of the receipt and acceptance of a proper application and the determination of its completeness in accordance with subsection (a) of this section, the director shall undertake and thereafter diligently conduct such investigations as necessary to determine that the construction or alteration of the proposed well or injection well will be in the public interest. The director may consider, but is not limited in his consideration to:

- (1) The financial resources of the applicant, his principal, or other person who may be legally responsible for the subject well or injection well, and the probability that such person will be financially able to bear all costs for which he might be responsible which may be incident to the construction, operation, and maintenance of the well or injection well proposed to be constructed or altered.
  - (2) The adequacy of measures proposed to safeguard subsurface, surface, and atmospheric resources from unreasonable degradation, and especially to protect ground-water aquifers and surface-water sources from contamination which would render such water of lesser quality than it would have had but for the contamination.
  - (3) The possibility that the construction and maintenance of the proposed well will cause waste or will damage any geothermal resource, reservoir, or other source, by unreasonable reduction of pressures or unreasonable reduction of any geothermal resource material medium or in any other manner, so as to render any geothermal resource of unreasonably less value.
  - (4) The adequacy of measures proposed to safeguard the environment of the area around the site of the proposed well from unreasonable contamination or pollution.
  - (5) Any possible interdependence between any geothermal resource, reservoir, pool, or other source expected to be affected under the permit and any aquifers or other sources of ground waters used for beneficial uses other than uses as a material medium or a mineral source, and the probability that such interdependence may cause such ground-water sources to be inadequate to meet demands on them under existing water rights.
- (c) Upon completion of the investigations required under subsection (b) of this section, the director shall approve the application in whole or in part or upon conditions, or reject the application. Any applicant or the director shall have a right to have a public hearing concerning the propriety of issuing a permit for which an application has been made under section 42-4003, Idaho Code. Hearings held under this subsection shall be governed by rules of procedure adopted by the water resource board pursuant to chapter 52, title 67, Idaho Code. Hearings held under this subsection shall be held at any location found to be appropriate by the water resource board.

**History.**

1972, ch. 301, § 5, p. 749; am. 1974, ch. 20, § 52, p. 533; am. 2007, ch. 189, § 2, p. 554.

**Compiler's Notes.** The 2007 amendment, by ch. 189, in subsection (a), inserted "within thirty (30) days of receipt" in the first sentence, and substituted "chapter" for "act" and "rules" for "regulations" in the last sentence; in the introductory paragraph in subsection (b), substituted "Within thirty (30) days of the

receipt" for "Upon receipt," and inserted "and the determination of its completeness in accordance with subsection (a) of this section" and "and thereafter diligently conduct"; and in subsection (c), added the first sentence, and twice substituted references to "this subdivision" for "subsection."

Section 4 of S.L. 2007, ch. 189 declared an emergency. Approved March 26, 2007.

**42-4005. Permit — Issuance — Sufficient security — Review — Appeal.** — (a) If the director finds that the well or the injection well as proposed to be constructed or altered is in the public interest, he shall issue

a permit. The director may issue a permit substantially in accordance with the specifications on the application, or the director may limit the scope of the permit granted or may issue a permit subject to conditions.

(b) If the director finds that the well or injection well as it is proposed to be constructed or altered in the application will not be in the public interest, he shall refuse to issue a permit. In no case shall the director issue a permit to construct or alter a well or injection well if he finds that use of the proposed well or injection well may be expected to unreasonably reduce the quality of any surface or ground waters below the quality which such waters would have had but for the proposed well.

(c) If the director refuses to issue a permit, or issues one subject to conditions or limitations, he shall issue a clear statement of his reasons for refusing to issue or issuing the limited permit. The director shall issue a statement of findings of fact and conclusions of law that provides a factual and legal basis for the order. The refusal of the director to issue a permit, together with the clear statement of the reasons for refusing to issue the permit shall be served on the applicant by certified mail. A permit issued conditionally or subject to limitations shall, with the statement of reasons required under this subsection, be served in the same manner as a refusal to issue a permit.

(d) An applicant denied a permit or issued a limited or conditional permit may seek a public hearing before the water resource board. A certified transcript of the proceedings and the evidence received at such hearing shall be maintained by the board. The board shall affirm, modify or reject the director's decision, and make its decision in the form of an order to the director. The hearing shall be conducted in accordance with chapter 52, title 67, Idaho Code. Judicial review of the final determination by the board may be secured pursuant to chapter 52, title 67, Idaho Code.

(e) The director shall not issue a permit if he finds that the operation of any well under a proposed permit will decrease ground water in any aquifer or other ground water source or will unreasonably decrease ground water available for prior water rights in any aquifer or other ground water source of water for beneficial uses, other than uses as a mineral source, an energy source, or otherwise as a material medium, unless and until the applicant has also obtained a permit for the appropriation of ground waters under chapter 2, title 42, Idaho Code.

(f) The director shall require, as a condition of every permit, that every person who engages in the construction, alteration, testing, or operation of a well provide evidence of good and sufficient security in the form of a bond, trust fund, letter of credit, insurance or other acceptable surety that ensures that the applicant perform the duties required by this chapter and properly abandon any well covered by such permit. Good and sufficient security shall be an amount not less than ten thousand dollars (\$10,000) or more than one hundred thousand dollars (\$100,000) as determined by the director based on the size and depth of the well, the complexity of the well, the resource to be recovered, the area of operation, and other relevant factors.

(g) Notwithstanding the requirements for sufficient security for individual permits identified in this section, the director shall have the discretion



to accept evidence of good and sufficient security in the form of a comprehensive wellfield or statewide bond, trust fund, letter of credit, insurance or other acceptable surety for all well permits owned by the applicant within a field or within the state, provided the amount of the comprehensive security does not exceed the total sum of the amounts under each individual permit.

#### **History.**

1972, ch. 301, § 6, p. 749; am. 1974, ch. 20, § 53, p. 533; am. 1980, ch. 238, § 22, p. 526; am. 1987, ch. 347, § 16, p. 741; am. 1993, ch. 216, § 40, p. 587; am. 2004, ch. 63, § 1, p. 283; am. 2007, ch. 189, § 3, p. 554.

**Compiler's Notes.** The 2007 amendment, by ch. 189, in the section catchline, substituted "sufficient security" for "bond"; in subsection (c), substituted "subsection" for "subdivision" near the end; in subsection (f), rewrote the first sentence, which formerly read: "The director shall require, as a condition of every permit, every person who en-

gages in the construction, alteration, testing, or operation of a well to file with the director, on a form prescribed by the director, a bond indemnifying the state of Idaho providing good and sufficient security, conditioned upon the performance of the duties required by this chapter and the proper abandonment of any well covered by such permit," and in the last sentence, substituted "Good and sufficient security" for "The bond" and "ten thousand dollars (\$10,000)" for "five thousand dollars (\$5,000)"; and added subsection (g).

Section 4 of S.L. 2007, ch. 189 declared an emergency. Approved March 26, 2007.

## CHAPTER 42

### GROUND WATER RECHARGE

#### SECTION.

42-4201A. Recharge of ground water basins — Director's authority to issue permit. [Repealed.]

#### SECTION.

42-4223. Contracts to receive benefits.

### **42-4201. Jerome, Lincoln, Gooding and Twin Falls counties — Project to recharge ground water basins — Director's authority to issue permit — Limitations.**

#### **Police Power.**

The city's ordinance's capitalization fee created an equitable buy-in structure, with revenues delegated for repairs, replacement and maintenance of system components proportionally used by those within the water district's system, and the capitalization fee was reasonable and rationally related to the pur-

pose of the city's regulatory function of insuring clean and safe water for those users of the district's system. The ordinance was adopted pursuant to a valid exercise of police power authority granted to the district by §§ 42-4201 and 42-3212. *Potts Constr. Co. v. N. Kootenai Water Dist.*, 141 Idaho 678, 116 P.3d 8 (2005).

### **42-4201A. Recharge of ground water basins — Director's authority to issue permit. [Repealed.]**

**Compiler's Notes.** This section, which comprised I.C., § 42-4201A, as added by 1982, ch. 204, § 1, p. 538; am. 1985, ch. 120,

§ 1, p. 292; am. 1994, ch. 274, § 1, p. 851, was repealed by S.L. 2009, ch. 242, § 2.

**42-4223. Contracts to receive benefits.** — Any privately owned electrical generating company, or any person or entity who has acquired or is in the process of acquiring a right to appropriate water downstream from the boundaries of the district may enter into a contract with the board of directors of the aquifer recharge district for the receipt of benefits from the district. The consideration to be paid by any company, person or entity so

contracting shall be as specified in the contract. Approval of any such contract by the director of the department of water resources shall be required before the contract shall become effective.

A contract executed and approved as herein provided may be used by the department of water resources as the basis for issuance of a permit to the electrical generating company or downstream appropriator for the appropriation and storage of such water as shall become available thereto as a result of the functioning of the district. Water appropriated under any such permit shall be deemed to be stored water and the use and manner of appropriation thereof shall be subject to all applicable limitations and restrictions imposed by law, including the provisions of subsection (3) of section 42-4201 or subsection (3) of section 42-234, Idaho Code.

Prior to the formation of the aquifer recharge district, any such electrical generating company or downstream appropriator may file with the director of the department of water resources a letter of intent to enter into such a contract.

**History.**

I.C., § 42-4223, as added by 1978, ch. 293, § 1, p. 723; am. 1982, ch. 204, § 5, p. 538; am. 2009, ch. 242, § 3, p. 743.

**Compiler's Notes.** The 2009 amendment,

by ch. 242, substituted "42-234" for "42-4201A" in the second paragraph.

## CHAPTER 44

### LEVEE DISTRICT ACT

**SECTION.**

42-4416. Commissioners — Powers and duties.

**42-4416. Commissioners — Powers and duties.** — The board of commissioners of levee districts shall have the following powers and duties:

(1) To annually fix and determine the amount of money required to be raised by taxation to supply funds for costs of maintenance, operation, and/or construction of the levees and equipment of the district, and to levy and cause to be collected assessments on real property within the district in an amount not to exceed eight hundredths percent (.08%) of each dollar of market value for assessment purposes; provided, however, that a higher levy may be approved and ratified by the qualified voters at an election to be held, subject to the provisions of section 34-106, Idaho Code, for that purpose, and said levy shall be certified by the board to the board of county commissioners of the county, or counties, in which said district is located, with directions that at the time and in the manner required by law for levying taxes for county purposes, such board, or boards, of county commissioners shall levy such tax upon the real property within the boundaries of the district. Such certification of levies shall be prepared and forwarded by the board of the levee district to the board, or boards, of county commissioners on or before September 1, of each year.

Such levies shall be levied and collected in the manner provided by law, and the moneys collected shall be turned over to the treasurer or treasurers, of the county, or counties, in which said district is located.

Said moneys shall be public funds and subject to the provisions of the public depository laws of the state.

(2) To employ such personnel as may be necessary to carry out the purposes and objects of this chapter, with the full power to bind said district for the compensation of such personnel.

(3) To sue and be sued in the name of the district; to have a seal, which seal shall be judicially noticed; to have perpetual succession unless terminated as hereinafter provided; to make and execute contracts and other instruments necessary or convenient to the exercise of its power and to promulgate, amend and repeal rules and regulations not consistent with the provisions of this chapter.

(4) To manage and conduct the business and affairs of the district, both within and without the district.

(5) To maintain, operate and/or construct levees for containment of irrigation water and for the prevention of floodwater whether within or without the boundaries of the district, and to enter into contract for the purposes set forth above; provided, however, that the board shall not enter into contracts except in accordance with the provisions of chapter 28, title 67, Idaho Code. However, where it is determined by order of the board that there is an existing emergency, the requirement for sealed competitive bids shall not apply.

(6) To prescribe the duties of officers, agents and employees as may be required.

(7) To establish the fiscal year of the district and to keep records of all business transactions of the district.

(8) To prepare a statement of the financial condition of the district at the end of each fiscal year according to generally accepted accounting principles, and publish in at least one (1) issue of some newspaper published, or in general circulation in, the county, or counties, in which such district is located and to file a certified copy of such financial report with the director of the department of water resources.

(9) To have an audit of the financial affairs of the district as required in section 67-450B, Idaho Code.

(10) To obtain options upon and acquire by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any property, real or personal, and improve any properties acquired; to receive income from such properties and to expend such income in carrying out the purposes and provisions of this chapter; to lease any of its property or interest therein in furtherance of the purposes and provisions of this chapter, provided that any contract or agreement for the acquisition, purchase or repair of personal property shall be entered into in accordance with the provisions of chapter 28, title 67, Idaho Code.

(11) To have the power of eminent domain for the use of the district in the maintenance, operation, and construction of its levees or any other use necessary in the carrying out of the provisions of this chapter.

(12) To convey rights-of-way and easements for highways, public roads, public utilities, and for other purposes, over district property, as shall be determined by the board to be in the best interests of the district.



(13) To convey, by deed, bill of sale, or other appropriate instrument, all of the estate and interest of the district, in any real or personal property. Prior to such sale or conveyance, the board shall have the property appraised by three (3) disinterested residents of the district, which appraisal shall be entered in the minutes of the board. The property may be sold at public auction or at a private sale by sealed competitive bids, as the board shall determine, to the highest cash bidder, provided that in no case shall any property of a district be sold for less than its appraised value. All sales by sealed competitive bids shall be advertised as herein provided.

(14) To enter into contracts or agreements with the United States or any of its officers, agents or subdivisions, or with the state or any of its officers, persons or agencies in effectuating, promoting and accomplishing the purposes of this chapter, provided that the district has sufficient moneys on hand, or in their budget for the year in which said contract is entered into, to defray the expenditure of funds called for in such contract without the creation of any indebtedness.

Whenever any such contract shall, by its terms, require the expenditure of funds by the district in excess of the moneys on hand or the funds to be realized from their budget for the year in which said contract is entered into, then such contract may not be entered into by the district until ratified by two-thirds (2/3) of the qualified voters voting at an election to be held, subject to the provisions of section 34-106, Idaho Code, for that purpose, according to the provisions of this chapter.

(15) To bear its allocated share of the cost of any project resulting from any contract or agreement entered into as provided herein.

(16) To take over, administer and maintain pursuant to any agreement or contract entered into in accordance with the provisions of this chapter, any levee project within or without the boundaries of the district undertaken in cooperation with the United States or any of its agencies, or with the state of Idaho or any of its agencies, or any combinations thereof.

(17) To accept donations, gifts and contributions in money, services, or materials or otherwise, from the United States or any of its agencies, or the state of Idaho or any of its agencies or any combinations thereof, and to expend such moneys, services, or materials in carrying on its operations.

(18) To exercise all other powers necessary, convenient or incidental to carrying out the purposes and provisions of this chapter.

**History.**

I.C., § 42-4416, as added by 1990, ch. 396, § 1, p. 1108; am. 1993, ch. 327, § 22, p. 1186; am. 1993, ch. 387, § 14, p. 1417; am. 1995, ch. 118, § 82, p. 417; am. 2005, ch. 213, § 12, p. 637.

**Compiler's Notes.** Sections 11 and 13 of

S.L. 2005, ch. 213 are compiled as §§ 42-3212 and 43-318A, respectively.

## CHAPTER 52

## GROUND WATER DISTRICTS

## SECTION.

42-5201. Short title — Title of districts — Definitions.

42-5210. Qualifications of voters for district elections.

42-5212. Registration not required.

42-5214. Ground water users included within the district — Notice and hearing for members included in district after March 31, 2005 — Order — Appeal and conclusiveness.

42-5218A. When election not required.

42-5218B. Notice of election.

42-5218C. Conduct of elections.

42-5218D. Canvass of returns — Declaration of winners.

42-5219. Directors at large.

42-5220 — 42-5222. [Amended and Redesignated.]

42-5224. Powers and duties of board of directors.

42-5225. Authority to construct and operate ground water recharge or storage project.

## SECTION.

42-5232. Levy of assessments.

42-5233. Power to incur indebtedness — Assessments to secure repayment — Warrants.

42-5240. Lien of assessment.

42-5242. Entry of delinquent assessments — Filing of delinquency list.

42-5244. Prohibition against participation in mitigation plan when subject to delinquent assessment or for nonpayment of other mitigation costs.

42-5245. Petition for annexation of land.

42-5251. Petition for exclusion of lands — Ground water irrigated lands — Lands of nonirrigator — Lands may remain in the district for mitigation purposes.

42-5253. Order of exclusion.

42-5256. Changes to be filed for record.

42-5259. Participation by nonmember in district solely for mitigation purposes.

**42-5201. Short title — Title of districts — Definitions.** — This chapter is known as the “Ground Water District Act”; the districts created hereunder may be termed “ground water districts.” When used in this chapter, and unless otherwise specified, the following terms shall be defined as follows:

(1) “Board” means the board of directors of a ground water district organized pursuant to this chapter.

(2) “Corporation” means a corporation or limited liability company.

(3) “County commission” means the board of county commissioners or any other governing board or authority for a county, as provided by law.

(4) “Department” means the Idaho department of water resources.

(5) “Director” means the director of the department of water resources.

(6) “District” means a ground water district established, or to be established, pursuant to this chapter.

(7) “Ground water” when used in this chapter means water under the surface of the ground whatever may be the geologic structure in which it is standing or moving, as provided in section 42-230(a), Idaho Code.

(8) “Ground water user” means the legal or beneficial owner of a ground water right, or the user of a ground water right pursuant to lease or contract of a ground water right to divert ground water of the state for a beneficial use or purpose, except for those diverting under rights used solely for domestic or stock use as defined by sections 42-111 and 42-1401A, Idaho Code, and provided, that for purposes of this chapter, the term ground water user shall not include any ground water right held by or on behalf of an Indian tribe or by tribal members for diversion and use within an Indian

reservation, ground water rights held by the United States or ground water rights held by the state of Idaho. A ground water user is within the boundary of a ground water district if the well or other point of diversion used by that ground water user is within the boundary. A husband and wife together diverting ground water pursuant to right shall constitute one (1) ground water user. Ground water user includes both a ground water irrigator and a nonirrigator as defined in this chapter.

(9) "Ground water irrigator" means a ground water user holding a ground water right for irrigation purposes within a ground water district.

(10) "Land" or "lands," when used in the context of the property of a ground water user subject to district assessment under this chapter, means the real property where ground water is diverted or placed to beneficial use, including the facilities in or through which a ground water user makes beneficial use of ground waters.

(11) "Nonirrigator" means a ground water user holding a ground water right for commercial, municipal, or industrial purposes within a ground water district. A ground water user will be deemed a nonirrigator for purposes of this chapter even though: (a) some component of the user's ground water use is for irrigation; or (b) the user holds a ground water right for irrigation that is incidental to, or normally associated with, the user's commercial, municipal or industrial purpose.

(12) "Member" means a ground water user whose lands, facilities and/or water rights are included in and subject to a ground water district and its policies.

(13) "Mitigation plan" means a plan to prevent or compensate for material injury to holders of senior water rights caused by the diversion and use of water by the holders of junior priority ground water rights who are participants in the mitigation plan.

(14) "Person" means an individual, partnership, trust, estate, association, corporation, municipal corporation, the state of Idaho and any of its agencies, the United States, an Indian tribe, a public corporation, or any other public or private entity.

(15) "Public corporation" means counties, city and counties, cities, school districts, municipal water districts, irrigation districts, recharge districts, water districts, park districts, subdistricts, and all other governmental agencies of this state, having the power of levying or providing for the levy of general or special taxes or special assessments, and any political subdivision of another state of the United States.

(16) "Water right" means the legal right to divert and beneficially use the public waters of the state of Idaho where such right is evidenced by a decree, a permit or a license issued by the department, a beneficial or constitutional use right evidenced by an adjudication claim or claim based on section 42-243, Idaho Code, or a right based on federal law.



**42-5210. Qualifications of voters for district elections.** — (1) Any ground water irrigator, and any nonirrigator who is a member for all purposes, within the proposed district shall be entitled to vote at any election held under the provisions of this chapter. The production of documentation of a water right as described in section 42-5201(16), Idaho Code, shall be sufficient evidence of ground water use for purposes of acting as an elector under this chapter. A representative of a ground water user shall be so designated by written proxy signed by the ground water user except that the vote of a state, city or county government may be cast by an elected or appointed official of the agency, or his designee. A corporation or partnership shall vote or otherwise act by a single individual who is authorized by the corporation or partnership to act on its behalf. A corporation or partnership must furnish the election officials a written designation stating the name of the individual who is authorized to vote and otherwise act for the corporation or partnership.

(2) Any ground water user who becomes a member of a district solely for mitigation purposes:

(a) Shall be entitled to vote only in those district elections concerning whether to incur indebtedness as specified in section 42-5234, Idaho Code; and

(b) Shall be ineligible to nominate directors or officers of the district, to serve in such capacities, or otherwise to participate in the governance of the district.

(3) A nonirrigator may participate in the election to determine whether a district will be formed only according to the following provisions:

(a) The nonirrigator shall notify the judges of election in writing at least ten (10) working days prior to the date of the election that such person supports the formation of the district, elects to become either a member for all purposes, or a member only for mitigation purposes as described in section 42-5214, Idaho Code, should it be formed, and, by such notice, casts its vote(s) in favor of formation.

(b) The notification shall contain a legal description of the land through which the nonirrigator places ground waters to beneficial use, a statement of the amount of such person's ground water right in cubic feet per second of diversions, and a copy of the ground water right documentation described in section 42-5201(16), Idaho Code.

(c) Once the judges of election have accepted the notification described in subsection (3)(b) of this section, they shall duly record the nonirrigator's vote(s) in favor of district formation in the canvassing of votes carried out pursuant to section 42-5213, Idaho Code.

(d) If the voting results in the formation of the district, the nonirrigator who provided such notification thereafter shall be a full member or member for mitigation purposes of such district, whichever the case may be, and shall have all obligations, rights, and limitations attaching thereto.

(4) Each ground water user shall have one (1) vote for each cubic foot per second, or proportion thereof (rounded to the nearest tenth of a cubic foot per second), for which such ground water user holds a ground water right whose point of diversion is within the proposed district boundaries.

**History.**  
I.C., § 42-5210, as added by 1995, ch. 290, § 1, p. 982; am. 1996, ch. 298, § 4, p. 977; am. 2005, ch. 367, § 2, p. 1155.

**Compiler's Notes.** Sections 1 and 3 of S.L.

2005, ch. 367 are compiled as §§ 42-5201 and 42-5212, respectively.

Section 20 of S.L. 2005, ch. 367 declared an emergency. Approved April 12, 2005.

**42-5212. Registration not required.** — No registration shall be required in any ground water district election, but in lieu thereof the judges of election shall require every elector to subscribe to an elector's oath as prerequisite to casting his vote, and such oath shall be the usual elector's oath with the following words added thereto, "I am a resident of ..... county, and I am a ground water user within the ..... (proposed) ground water district, or I am a representative of a ground water user within the .....(proposed) ground water district" and present evidence of such ground water use pursuant to section 42-5201(16), Idaho Code, if they do not appear on the department's list as provided in section 42-5206, Idaho Code.

**History.**  
I.C., § 42-5212, as added by 1995, ch. 290, § 1, p. 982; am. 2005, ch. 367, § 3, p. 1155.

**Compiler's Notes.** The words enclosed in parentheses so appeared in the law as enacted.

Sections 2 and 4 of S.L. 2005, ch. 367 are compiled as §§ 42-5210 and 42-5214, respectively.

Section 20 of S.L. 2005, ch. 367 declared an emergency. Approved April 12, 2005.

**42-5214. Ground water users included within the district — Notice and hearing for members included in district after March 31, 2005 — Order — Appeal and conclusiveness.** — (1) All ground water irrigators within the boundaries of the district shall be members of the district and subject to assessments, rights and responsibilities established by the district as set forth in this chapter, notwithstanding any change in the ownership or control of the property of the water user, whether by way of transfer, exchange, conveyance, assignment, lease, or otherwise, to which the water right or rights used to determine assessments are appurtenant, unless excluded from the district pursuant to sections 42-5251 through 42-5257, Idaho Code. Except as provided in section 42-5276, Idaho Code, any ground water irrigator who previously was not a member as of March 31, 2005, shall be included as a member effective upon order of the board finding and confirming that inclusion of such ground water irrigator is in the best interests of the district and that such ground water irrigator shall receive benefits from such inclusion as a member. Such order may be made only after the board shall have caused a notice of such hearing to be published in the manner of notices of elections, which notice shall state that all persons interested in or that may be affected by such inclusion as a member shall appear at the time and place named in the notice and show cause in writing why they should not be included as a member. The board, at the time mentioned in said notice shall hear any objections to inclusion. The failure of any person to file with the district office an objection to inclusion as a member prior to the noticed hearing shall be taken as an assent on his part to such inclusion as a member of the district. Any order confirming the inclusion of ground water irrigators as members of the district shall be certified by the board president and secretary and filed for record in the

recorder's office of each county within which are situated any lands of the district and notice of the order shall be published in the manner of notices of elections. Any person who properly has filed an objection to inclusion as a member shall have the right to appeal to the district court of the county in which such person's ground water right is situated, provided such appeal shall be made within thirty (30) days from the date of publication of the order confirming such inclusion. After said thirty (30) day appeal period, no one shall have any cause or right of action to contest the legality, formality or regularity of said order of inclusion for any reason whatsoever, and thereafter, said inclusion and the constitution and validity of the district shall be considered valid and incontestable without limitation. Any ground water irrigator who previously was not a member of the district as of March 31, 2005, that is included as a member upon order of the board shall be liable for his proportionate share of all costs of the district incurred after such date, including his proportionate share of all bonded, warrant or other indebtedness incurred prior to March 31, 2005, but only the proportionate share of such prior indebtedness applicable to the period after March 31, 2005.

(2) All nonirrigators within the boundaries of the district who voted according to notice as provided in section 42-5210(3), Idaho Code, are members of the district as specified in such notice.

(3) A nonirrigator also may become a member of a district by providing, within sixty (60) days after the date on which the district is formed, written notice to the district board that the nonirrigator wishes to join the district either as a member for all purposes or as a member for mitigation purposes only. Upon providing such notice, the nonirrigator shall be either a member for all purposes or a member for mitigation purposes only, as specified in the notice, and shall be subject to assessment accordingly as provided in this chapter. After such sixty (60) day period, a nonirrigator may become a member of a district only through the annexation procedure described in sections 42-5245 through 42-5249, Idaho Code.

(4) Except as provided for nonirrigators as defined in subsection (11) of section 42-5201, Idaho Code, any person whose permit, license, or other entitlement to appropriate ground water was acquired after the formation of the district, or who appropriates ground water for uses not requiring a permit after the formation of the district, but qualifies as a ground water user under subsection (8) of section 42-5201, Idaho Code, within the area of the district in all other respects, shall be deemed included within and subject to assessment by the district, if benefitted either directly or indirectly by the district as of the date the permit, license, or entitlement is acquired.

#### **History.**

I.C., § 42-5214, as added by 1995, ch. 290, § 1, p. 982; am. 1996, ch. 298, § 5, p. 977; am. 2005, ch. 367, § 4, p. 1155; am. 2006, ch. 355, § 1, p. 1085.

**Compiler's Notes.** Sections 3 and 5 of S.L. 2005, ch. 367 are compiled as §§ 42-5212 and 42-5218A, respectively.

The 2006 amendment, by ch. 355, substituted "nonirrigators as defined in subsection (11) of section 42-5201, Idaho Code" for "municipal, commercial, industrial, federal and tribal ground water users in subsection (1) of this section" in subsection (4).

Section 20 of S.L. 2005, ch. 367 declared an emergency. Approved April 12, 2005.



Section 5 of S.L. 2006, ch. 355 declared an emergency. Approved April 7, 2006.

**42-5218A. When election not required.** — In any election for directors if, after the expiration of the date for filing written nominations for the office of director, it appears that only one (1) qualified candidate has been nominated thereby for each position to be filled, it shall not be necessary to hold an election, and the board of directors shall, within five (5) days after expiration of the date for filing written nominations, declare such candidate elected as director. The procedure set forth in this section shall not apply to any other district election.

**History.**

I.C., § 42-5219, as added by 1995, ch. 290, § 1, p. 982; am. and redesisg. 2005, ch. 367, § 5, p. 1155.

**Compiler's Notes.** This section, which was originally compiled as § 42-5219, was amended and redesignated as § 42-5218A by § 5 of S.L. 2005, ch. 367.

Sections 4 and 6 of S.L. 2005, ch. 367 are compiled as §§ 42-5214 and 42-5218B, respectively.

Section 20 of S.L. 2005, ch. 367 declared an emergency. Approved April 12, 2005.

**42-5218B. Notice of election.** — The secretary of the district shall give notice of all elections in the district by posting the same in five (5) public places in each county in which a part of the district is situated and in the office of the board of directors at least four (4) weeks before the day of such election, or by publication of the notice once a week for four (4) successive weeks in a newspaper or newspapers published in each of said counties or in a newspaper of general circulation therein. Notices shall state the time of the election and the location of polling places within the district and the directors to be elected or other question to be voted upon, as the case may be.

**History.**

I.C., § 42-5220, as added by 1995, ch. 290, § 1, p. 982; am. and redesisg. 2005, ch. 367, § 6, p. 1155.

**Compiler's Notes.** This section, which was originally compiled as § 42-5220, was amended and redesignated as § 42-5218B by § 6 of S.L. 2005, ch. 367.

Sections 5 and 7 of S.L. 2005, ch. 367 are compiled as §§ 42-5218A and 42-5218C, respectively.

Section 20 of S.L. 2005, ch. 367 declared an emergency. Approved April 12, 2005.

**42-5218C. Conduct of elections.** — The election shall be conducted as nearly as practicable in accordance with the general laws of the state; provided that no particular form of ballot shall be required and the provisions of the election laws as to the form and distribution of ballots shall not apply and each ballot must indicate the number of cubic feet per second associated with the ballot cast. The board of directors shall designate polling places in such number as it may deem necessary. At least ten (10) days before the holding of any election, the board shall appoint three (3) electors to serve as judges of election at each polling place. The judges shall perform the same duties as near as may be, as judges of election under the general laws of the state. Immediately after the election, the judges of election shall forward the official results to the secretary of the district.

**History.**

I.C., § 42-5221, as added by 1995, ch. 290, § 1, p. 982.; am. and redesign. 2005, ch. 367, § 7, p. 1155.

**Compiler's Notes.** This section, which was originally compiled as § 42-5221, was amended and redesignated as § 42-5218C by § 7 of S.L. 2005, ch. 367.

Sections 6 and 8 of S.L. 2005, ch. 367 are compiled as §§ 42-5218B and 42-5218D, respectively.

Section 20 of S.L. 2005, ch. 367 declared an emergency. Approved April 12, 2005.

**42-5218D. Canvass of returns — Declaration of winners.** — On the first Monday after each election, or at a time designated by the board of directors, the board shall meet at its usual place of meeting and proceed to canvass the returns. By order entered on its minutes, the board shall declare elected the person or persons having the highest number of votes for each office.

**History.**

I.C., § 42-5222, as added by 1995, ch. 290, § 1, p. 982; am. and redesign. 2005, ch. 367, § 8, p. 1155.

**Compiler's Notes.** This section, which was originally compiled as § 42-5222, was amended and redesignated as § 42-5218D by § 8 of S.L. 2005, ch. 367.

Sections 7 and 9 of S.L. 2005, ch. 367 are compiled as §§ 42-5218C and 42-5219, respectively.

Section 20 of S.L. 2005, ch. 367 declared an emergency. Approved April 12, 2005.

**42-5219. Directors at large.** — In the event a district is divided into six (6) or fewer divisions, the district is authorized to elect one (1) to two (2) directors at large. Directors at large shall be elected at the annual meeting of the district by a two-thirds (2/3) majority of the members present at the meeting. Every director at large elected pursuant to the provisions of this section shall be a ground water user in the district. Directors at large shall hold office for a term of two (2) years, or until their successors are elected and qualified. Provided however, that in no event shall a district have more than a total of seven (7) directors serving at any time whether elected pursuant to the provisions of section 42-5218, Idaho Code, or pursuant to this section.

**History.**

I.C., § 42-5219, as added by 2005, ch 367, § 9, p. 1155.

**Compiler's Notes.** Former § 42-5219 was amended and redesignated as § 42-5218A, effective April 12, 2005, pursuant to S.L. 2005, ch. 367, § 5.

Sections 8 and 10 of S.L. 2005, ch. 367 are compiled as §§ 42-5218D and 42-5224, respectively.

Section 20 of S.L. 2005, ch. 367 declared an emergency. Approved April 12, 2005.

**42-5220 — 42-5222. [Amended and Redesignated.]**

**Compiler's Notes.** Former §§ 42-5220 to 42-5222, were amended and redesignated as §§ 42-5218B to 42-5218D, respectively, effective

April 12, 2005, pursuant to S.L. 2005, ch. 367, §§ 6 to 8.

**42-5224. Powers and duties of board of directors.** — The board shall, in addition to any other powers and duties provided in this chapter, and provided that nothing in this chapter shall abrogate or impair the right

of any person to take any action necessary to acquire, protect, challenge or defend any water right, have the following powers and duties:

(1) To acquire, and/or construct, operate, control or use by appropriation, grant, purchase, bequest, devise, contract or lease works or facilities, water rights, water permits or licenses, well-drilling permits, wells, pipelines, ditches and any other real and personal property (including easements and rights-of-way) or contract entitlement within or without the district necessary or convenient to fully exercise its powers;

(2) To sell, lease, encumber, alienate, or otherwise dispose of works or facilities, water, water rights, wells, pipelines, ditches, reservoirs, recharge facilities, and any other real and personal property owned by the district within or without its boundaries, and to incur indebtedness on behalf of the district as specified in this chapter;

(3) To enter into contracts and agreements, cooperative and otherwise, including contracts with the United States of America and any of its agencies or instrumentalities, and tribes, and contracts with corporations, public or private, municipalities, or governmental subdivisions necessary or convenient to fully exercise its powers;

(4) To hire and retain agents, employees, engineers, hydrologists, geologists, and attorneys as shall be necessary and convenient to transact the district's business and to represent the district's interests;

(5) To levy assessments for the operation of the district and its programs;

(6) To represent district members, with respect to their individual water rights, in general water rights adjudications and other legal and administrative proceedings or before political bodies, provided that the board may levy assessments for these matters against only those members who have given written consent for the representation;

(7) To represent district members in proceedings or meetings of a water district established by the director of the department notwithstanding any provision to the contrary in chapter 6, title 42, Idaho Code. Provided however, that the board shall not be authorized to cast a vote in any proceeding or meeting of a water district established pursuant to chapter 6, title 42, Idaho Code, on behalf of any district member who has, prior to such proceeding or meeting, given written notice to the board and to the water district that such district member intends to vote on his own behalf, or on behalf of any district member who attends such meeting or proceeding and intends to vote on his own behalf. The board shall provide a verified list of the water rights that it represents at any water district proceeding or meeting to the chairman of the water district proceeding or meeting;

(8) To appropriate, develop, store, and transport water within the state;

(9) To acquire stock in canal companies, water companies, and water users' associations;

(10) To invest any surplus money in the district treasury pursuant to the public depository law as contained in chapter 1, title 57, Idaho Code;

(11) To develop, maintain, operate and implement mitigation plans designed to mitigate any material injury caused by ground water use within the district upon senior water uses within and/or without the district;

(12) To finance the repair or abandonment of wells in the ground water district which have experienced or are experiencing declines in water level



or water pressures because of reasons including, but not limited to, flow, leakage, and waste from improper construction, maintenance, and operation of wells;

(13) To have and exercise the power of eminent domain in the manner provided by law for the condemnation of private property for easements, rights-of-way, and other rights of access to property necessary to the exercise of the mitigation powers herein granted, both within and without the district;

(14) To sue and be sued, and be a party to suits, actions and proceedings;

(15) To enter into joint powers agreements and/or memoranda of understanding with other districts, governmental or quasi-public entities;

(16) To develop and acquire water rights for, and operate, aquifer storage or recharge projects;

(17) To monitor, measure, study, and implement programs in the interests of the district's members regarding the protection of ground water diversions, depth of water in wells, aquifer water levels and characteristics;

(18) To adopt and amend bylaws not in conflict with the constitution and laws of the state for carrying on the business, objects and affairs of the board and of the district and to establish a fiscal year;

(19) To enter upon land to make surveys, locate district property, works, or facilities, and to otherwise conduct the affairs of the district;

(20) To make, record and report annually to the director sufficient measurements of diversions and water levels of district members to allow the district to be excluded from any water measurements district created pursuant to sections 42-705 through 42-715, Idaho Code;

(21) To manage and conduct the affairs of the district and to have and exercise all rights and powers necessary or incidental to or implied from the specific powers granted herein. Such specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of this chapter.

#### **History.**

I.C., § 42-5224, as added by 1995, ch. 290, § 1, p. 982; am. 1996, ch. 298, § 8, p. 977; am. 2003, ch. 137, § 1, p. 400; am. 2005, ch. 367, § 10, p. 1155.

**Compiler's Notes.** Sections 9 and 11 of S.L. 2005, ch. 367 are compiled as §§ 42-5219 and 42-5233, respectively.

Section 20 of S.L. 2005, ch. 367 declared an emergency. Approved April 12, 2005.

**42-5225. Authority to construct and operate ground water recharge or storage project.** — Any ground water district organized under the laws of this state is authorized in section 42-234, Idaho Code, to file an application with the department to acquire water rights or to appropriate the unappropriated waters of the state for the purpose of storing waters in, or recharging, ground water basins within the district to aid in the efficient irrigation of district lands, to serve domestic, commercial, municipal or industrial uses within the district, or to carry out a mitigation plan. Upon approval of the application for permit by the director, the district shall proceed in the manner provided by law to construct and operate the ground water storage or recharge project. The construction and operation of the project shall be subject to such additional conditions and limitations as shall

be imposed by the director pursuant to sections 42-203A, 42-222 and 42-234, Idaho Code.

**History.**

I.C., § 42-5225, as added by 1995, ch. 290, § 1, p. 982; am. 2009, ch. 242, § 4, p. 743.

**Compiler's Notes.**

The 2009 amendment, by ch. 242, in the first and last sentences, substituted "42-234" for "42-4201A".

**42-5232. Levy of assessments.** — (1) The secretary of the board shall be the assessor of the district, and on or before August 1 of each year shall prepare an assessment book containing a full and accurate list of all lands within the district that are subject to assessment under this chapter.

(2) At a regular meeting of the board between August 1 and November 1 of each year, the board of directors shall determine the amount necessary to be raised for payment of the annual payment on any and all indebtedness of the district for the following year. Money received in payment of such assessments shall be deposited in a separate fund to be known as the debt retirement fund.

(3) The board shall, in addition, determine the assessments necessary to pay, without limitation, the expenses of developing, operating or maintaining any mitigation plan established by the district and the cost of contracts with any person for mitigation plans, or evaluation of proposed contracts. Money received in payment of such assessments shall be deposited in a separate fund to be known as the mitigation expense fund.

(4) The board shall, in addition, determine the assessments necessary to pay maintenance and operation of the district not related to mitigation plans or purposes. These operation and maintenance duties include making the assessment book, giving notice of assessments and making collections thereof, and other duties, programs or projects of the district to the extent such duties, programs or projects are not attributable to mitigation plans or purposes. Money received in payment of such assessments shall be deposited in a separate fund of the district to be known as the operating expense fund.

(5) Any ground water user who becomes a member of a district for mitigation purposes shall be subject to no assessment beyond his proportional share of the costs, including administrative costs and other reasonable expenses, of any mitigation plan or actions or activities in furtherance of the district's mitigation plans or purposes.

(6) No assessment made pursuant to this chapter shall be a lien against any municipal property.

(7) Except as otherwise provided in this chapter, each member shall pay a proportionate share of the total of all amounts to be assessed for the purposes aforementioned, which share shall be based on the ratio which the quantity of water the water user is authorized to appropriate under the member's ground water right(s) bears to the total quantity of water authorized for appropriation under the ground water rights of all water users in the district, provided, that the board shall be entitled to levy assessments that adjust a member's proportionate share to take into consideration priority dates, consumptive use under the members' respective ground water rights, other attributes of the ground water rights



appurtenant to the assessed lands, and/or the benefits the member derives from a mitigation plan or other activity of the district. Any nonirrigator who is a member of a ground water district, or whose ground water rights are appurtenant to property located within a ground water district, and who has adopted and implemented a mitigation plan that has been approved by the director and that is not inconsistent with such a plan approved by the director and adopted and implemented by the ground water district, shall be entitled to an assessment credit for the contribution made by that nonirrigator's mitigation plan towards the district's mitigation obligation as determined by the director.

**History.**

I.C., § 42-5232, as added by 1995, ch. 290, § 1, p. 982; am. 2006, ch. 355, § 2, p. 1085.

Section 5 of S.L. 2006, ch. 355 declared an emergency. Approved April 7, 2006.

**Compiler's Notes.** The 2006 amendment, by ch. 355, added the last sentence in (7).

**42-5233. Power to incur indebtedness — Assessments to secure repayment — Warrants.** — (1) In order to secure funds for the mitigation plan or plans for the district, the board of directors may, by resolution duly adopted and entered upon the minutes, incur indebtedness by contract with a money lending institution; provided however, that the term of such indebtedness shall not exceed thirty (30) years. To secure the repayment of any indebtedness so incurred, the board shall levy assessments over the term of the indebtedness in amounts sufficient to repay the interest and principal as it falls due. Such assessments shall be levied in the manner and shall be subject to the limitations set forth in section 42-5232, Idaho Code, and may be levied only if the indebtedness has been approved at an election pursuant to sections 42-5234 through 42-5238, Idaho Code.

(2) Notwithstanding the provisions of subsection (1) of this section, the board of directors may, before the collection of the first assessment, incur indebtedness for the purpose of organization, or for any of the purposes of this chapter, and cause warrants of the district to issue therefor, provided that the total dollar amount of the warrants authorized to be issued shall not exceed one dollar (\$1.00) for each two-hundredths (.02) of a cubic foot per second of ground water authorized to be diverted and used upon lands or facilities located within the district. Following the collection of the first assessment, the board of directors may at any time issue warrants of the district for the purpose of paying claims of indebtedness against the district, including salaries of officers and employees, not to exceed the district's anticipated revenue.

(3) The warrants herein authorized shall be in form and substance the same as county warrants or as nearly the same as may be practicable and shall be signed by the chairman and attested by the secretary of said board. All such warrants shall be presented by the holder thereof to the treasurer of the district for payment who shall endorse thereon the day of presentation for payment with the additional endorsement thereon, in case of nonpayment, that they are not paid for want of funds, and such warrants shall draw interest at a rate to be established by the board of directors from the date of their presentation to the treasurer for payment as aforesaid until such



warrants are paid. No warrants shall be issued in payment of any indebtedness of such district for less than face or par value. It shall be the duty of the treasurer from time to time when sufficient funds are available for that purpose to advertise in a newspaper in the county in which the district is situated requiring the presentation to the treasurer for payment of as many of the outstanding warrants as are able to be paid. Ten (10) days after the first publication of said notice by the treasurer calling in any of said outstanding warrants, said warrants shall cease to bear interest, which shall be stated in the notice. Said notice shall be published two (2) weeks consecutively and said warrants shall be called in and paid in the order of their endorsement.

<b>History.</b> I.C., § 42-5233, as added by 1995, ch. 290, § 1, p. 982; am. 2005, ch. 367, § 11, p. 1155.	S.L. 2005, ch. 367 are compiled as §§ 42-5224 and 42-5242, respectively. Section 20 of S.L. 2005, ch. 367 declared an emergency. Approved April 12, 2005.
<b>Compiler's Notes.</b> Sections 10 and 12 of	

**42-5240. Lien of assessment.** — From and after January 1 of any year, all assessments, other than those levied against municipalities, shall be liens against the land of ground water users to which the water rights used to determine assessments are appurtenant, and notwithstanding anything to the contrary in this chapter or any provisions incorporated therein by reference, shall be superior to the lien of any mortgage or deed of trust, whether prior in time or not, provided that notice of the assessment delinquency is sent to the mortgage or deed of trust holder at least sixty (60) days prior to any foreclosure sale of the property. Said assessment liens shall not be removed until the assessments are paid or the property is sold for the payment thereof, and shall constitute such lien until paid. Upon any sale of the property the purchaser at such sale shall take the property subject to any annual assessments of the district subsequent in time to the assessment for which the foreclosure occurred. Nothing in this section alters or affects any liens of water related districts or entities authorized pursuant to Idaho law.

<b>History.</b> I.C., § 42-5240, as added by 1995, ch. 290, § 1, p. 982; am. 2011, ch. 325, § 1, p. 950.	against municipalities, shall be liens against the land of ground water users to which the water rights used to determine assessments are appurtenant. Such liens shall not be re- moved until the assessments are paid or the property is sold for the payment thereof."
<b>Compiler's Notes.</b> The 2011 amendment, by ch. 325, rewrote this section, which for- merly read: "From and after January 1 of any year, all assessments, other than those levied	

**42-5242. Entry of delinquent assessments — Filing of delinquency list.** — (1) On or before the 15th day of January of each year the treasurer shall enter the amount of all delinquent assessments upon the assessment book, which entry shall be considered to be dated as of the first day of January. Such entry shall have the force and effect of a sale to the treasurer of the district as grantee in trust for the district of all property to which a lien has attached as a result of such unpaid assessments.

(2) The treasurer shall compile a list of such delinquency entries which shall contain the names of the persons or entities to whom the assessments

were directed and the amount of such delinquent assessments together with the amount of the penalties to be added thereto. A certified copy of the delinquency list, duly acknowledged by the treasurer, shall be filed with the county recorder of each county in which the properties affected by such delinquent assessments are located, and the treasurer shall then provide by certified mail a notice of delinquency to each ground water user having a delinquent assessment.

(3) Upon the payment in full of any delinquent assessment and penalty that was entered on a recorded delinquency list, the treasurer shall file with the county recorder of each county in which the list of delinquent assessments was recorded an acknowledged notice that the delinquent assessment and any penalty owed has been paid in full. The treasurer shall file any notices of payment of delinquent assessments with the county recorders, as required, on at least a monthly basis.

**History.**

I.C., § 42-5242, as added by 1995, ch. 290, § 1, p. 982; am. 2005, ch. 367, § 12, p. 1155.

S.L. 2005, ch. 367 are compiled as §§ 42-5233 and 42-5244, respectively.

Section 20 of S.L. 2005, ch. 367 declared an emergency. Approved April 12, 2005.

**Compiler's Notes.** Sections 11 and 13 of

**42-5244. Prohibition against participation in mitigation plan when subject to delinquent assessment or for nonpayment of other mitigation costs.** — A ground water user who is delinquent in the payment of any assessment against his water use under this chapter, or who has failed to pay other mitigation costs owed to the district when due, is prohibited from being a participant in any mitigation plan until such delinquent assessment, or other past due amount owed for mitigation costs, is paid in full. The district shall provide the director a report of such delinquent assessments, or other past due mitigation costs, at the first of each month for purposes of enforcement. Prior to undertaking enforcement, the director may require from the district an accounting of the basis for the assessment and other mitigation costs and the apportionment of those assessments and costs among district members and nonmember participants. The district shall inform the director immediately upon the payment of any such delinquent assessment, or other past due mitigation costs. This section shall be enforced by the watermaster within water districts established under chapter 6 of this title, and by the director pursuant to sections 42-351 and 42-1701B, Idaho Code, in areas outside of such water district.

**History.**

I.C., § 42-5244, as added by 1995, ch. 290, § 1, p. 982; am. 1998, ch. 173, § 14, p. 595; am. 2005, ch. 367, § 13, p. 1155; am. 2006, ch. 355, § 3, p. 1085.

**Compiler's Notes.** Sections 12 and 14 of S.L. 2005, ch. 367 are compiled as §§ 42-5242 and 42-5245, respectively.

Section 20 of S.L. 2005, ch. 367 declared an emergency. Approved April 12, 2005.

The 2006 amendment, by ch. 355, inserted "and nonmember participants" at the end of the third sentence.

Section 5 of S.L. 2006, ch. 355 declared an emergency. Approved April 7, 2006.

**42-5245. Petition for annexation of land.** — Any ground water user, as defined in section 42-5201(8), Idaho Code, as well as any user of ground water for domestic or stock use as defined by sections 42-111 and 42-1401A,

Idaho Code, may file with the board a petition in writing praying that the land and/or facilities listed under the ground water user's ground water right(s) may be annexed into the district. The petition shall contain a legal description of the lands and any other information the district may require, and the petitioner shall state under oath that petitioner holds the title to said lands. If the ground water user is a nonirrigator, the petition shall state if the ground water user is seeking to join the district solely to participate in the district's mitigation plan or other mitigation activities.

<p><b>History.</b> I.C., § 42-5245, as added by 1995, ch. 290, § 1, p. 982; am. 2005, ch. 367, § 14, p. 1155. <b>Compiler's Notes.</b> Sections 13 and 15 of</p>	<p>S.L. 2005, ch. 367 are compiled as §§ 42-5244 and 42-5251, respectively. Section 20 of S.L. 2005, ch. 367 declared an emergency. Approved April 12, 2005.</p>
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**42-5251. Petition for exclusion of lands — Ground water irrigated lands — Lands of nonirrigator — Lands may remain in the district for mitigation purposes.** — (1) Any district member who is an irrigator may file with the district board a petition requesting that the member's irrigated lands be excluded from the district. The petition may request that the lands either be excluded for all purposes or be excluded for all purposes except mitigation. The petition shall be signed by each petitioner, and shall state that continued inclusion of the irrigated lands in the district is inappropriate or unwarranted:

- (a) Because the diversions of ground water under the ground water irrigator's water right have no depletive effect on any water source, either individually or cumulatively when considered in conjunction with other similar diversions;
- (b) Because the only ground water use associated with the lands sought to be excluded by the petition is a domestic or stock water use as defined by sections 42-111 and 42-1401A, Idaho Code;
- (c) Because the exclusion of the lands will not impair the district's ability to repay debt or carry out mitigation plans;
- (d) Because the exclusion is in the best interests of the district and its members; or
- (e) For other compelling reasons.

The board shall consider the petition and, based on findings concerning such factors, the board shall grant or deny the petition within ninety (90) days of the date it is filed, unless the board, in its sole discretion, grants a hearing on the petition within such time period, in which case the board shall issue a final decision within sixty (60) days after the conclusion of the hearing.

(2) Any district member who is a nonirrigator, may file with the district board a petition requesting that the member's lands be excluded from the district. The petition may request that the lands either be excluded for all purposes or be excluded for all purposes except mitigation. The petition shall be signed by each petitioner, but need not be acknowledged. The board shall consider the petition and grant or deny the petition within ninety (90) days of the date it is filed, unless the board, in its sole discretion, grants a hearing on the petition within such time period, in which case the board shall issue a final decision within sixty (60) days after the conclusion of the hearing.



(3) All costs incurred by the district in carrying out an exclusion proceeding shall be assessed as provided in section 42-5253, Idaho Code. A person purchasing land under a written contract shall be deemed to be the owner of that land for purposes of this section.

**History.**

I.C., § 42-5251, as added by 1995, ch. 290, § 1, p. 982; am. 2005, ch. 367, § 15, p. 1155; am. 2006, ch. 355, § 4, p. 1085.

**Compiler's Notes.** Sections 14 and 16 of S.L. 2005, ch. 367 are compiled as §§ 42-5245 and 42-5253, respectively.

The 2006 amendment, by ch. 355, inserted "Ground water irrigated lands — Lands of nonirrigator —" in the section heading; designated the introductory language as subsection (1) and redesignated the remainder of the

section accordingly; inserted "who is an irrigator" following "district member" in the first sentence of the introductory language of subsection (1); inserted "irrigated" or "irrigators" in the introductory language in subsection (1) and in subsection (1)(a); and added subsection (2).

Section 20 of S.L. 2005, ch. 367 declared an emergency. Approved April 12, 2005.

Section 5 of S.L. 2006, ch. 355 declared an emergency. Approved April 7, 2006.

**42-5253. Order of exclusion.** — (1) In the event the district's board of directors grants a petition for exclusion, the board shall, by resolution, make an order forthwith excluding the lands described in the petition either for all purposes or for only those purposes not related to mitigation. No hearing is required prior to granting a petition for exclusion.

(2) At a minimum, the order of exclusion shall specify that:

(a) Lands excluded for all purposes shall not be a part of or be entitled to receive any benefits from the district;

(b) Lands excluded only for purposes not related to mitigation, shall continue to be part of the district for mitigation purposes only and shall be assessed for these purposes as provided under this chapter;

(c) Any excluded lands are subject to the requirements of section 42-5257, Idaho Code.

(d) When the petition is filed on or before December 1 in any calendar year, any assessment, other than those specified in section 42-5257, Idaho Code, against the land for any calendar year subsequent to the year in which the petition was filed shall not be valid and no lien for any such attempted assessment shall attach under section 42-5240, Idaho Code.

**History.**

I.C., § 42-5253, as added by 1995, ch. 290, § 1, p. 982; am. 2005, ch. 367, § 16, p. 1155.

**Compiler's Notes.** Sections 15 and 17 of

S.L. 2005, ch. 367 are compiled as §§ 42-5251 and 42-5256, respectively.

Section 20 of S.L. 2005, ch. 367 declared an emergency. Approved April 12, 2005.

**42-5256. Changes to be filed for record.** — Any decision and order of the board of directors or the district court, in case of appeal, excluding the petitioner's land and changing the boundaries of such ground water district shall be filed for record in the recorder's office of the county or counties within which are situated the lands of such ground water district.

**History.**

I.C., § 42-5256, as added by 1995, ch. 290, § 1, p. 982; am. 2005, ch. 367, § 17, p. 1155.

**Compiler's Notes.** Sections 16 and 18 of

S.L. 2005, ch. 367 are compiled as §§ 42-5253 and 42-5259, respectively.

Section 20 of S.L. 2005, ch. 367 declared an emergency. Approved April 12, 2005.

**42-5259. Participation by nonmember in district solely for mitigation purposes.** — (1) Upon written request from a ground water user who is not a member of a district, and regardless of whether such user is an irrigator, a district board of directors shall enter a contract with such nonmember pursuant to which the nonmember shall be allowed to participate fully in, and obtain all benefits of, any mitigation plan, purpose or activity the district currently has in force or is developing, provided that:

(a) The board finds that the plan is likely to be effective in mitigating the effects of such nonmember's ground water use, and that including the nonmember within the mitigation plan's coverage will not impair the plan's effectiveness as to district members;

(b) If the district's mitigation plan has been approved by the director, the board shall evaluate the contract request in accordance with any conditions of the district's mitigation plan which address equitable participation by ground water users who do not initially participate in such mitigation plan;

(c) Before the contract may be effective, the board may collect from the nonmember a payment adequate to compensate the district for the nonmember's proportional share of the costs the district already has incurred in developing and implementing the mitigation plan;

(d) The board may include in the contract a provision requiring the nonmember to pay a reasonable surcharge, either annually or on some other basis, to reimburse the district for such nonmember's proportional share of those past or future costs of operating the district attributable to formulating or implementing the mitigation plan or plans in which the nonmember is participating;

(e) The board may require the nonmember to provide security to assure the payment of all assessments and charges related to the contract;

(f) Nothing in this section shall be interpreted to limit the district's ability to enter into a contract with nonmembers pursuant to terms and conditions acceptable to both parties.

(2) If the legislature has provided by law that the holders of certain ground water rights not otherwise covered by a mitigation plan approved by the director of the department of water resources shall be deemed nonmember participants in the district solely for mitigation purposes, then the district may collect a proportional share of the costs incurred under the mitigation plan from the nonmember participants, as follows:

(a) The board may collect from each nonmember participant a payment adequate to compensate the district for the nonmember's proportional share of the past itemized costs the district has incurred in developing and implementing the mitigation plan;

(b) The board may require the nonmember to pay a reasonable surcharge, either annually or on some other basis, to reimburse the district for the nonmember's proportional share of those past or future itemized costs of operating the district attributable to formulating or implementing the mitigation plan or plans in which the nonmember is participating;

(c) The board may require that the nonmember pay the amounts owed under this section before coverage under the mitigation plan is effective,

provided the board has notified the nonmember by mail of the amount owed at least forty-two (42) days prior to the due date;

(d) As an alternative to immediate payment of the amount owed, the board may accept security from the nonmember to assure that payment of all costs and charges owed by the nonmember under this section shall be paid by a fixed later date;

(e) Nothing in this section shall be interpreted to limit the district's ability to enter into a contract with nonmembers pursuant to terms and conditions acceptable to both parties;

(f) The board shall have the right to collect any costs and charges due and unpaid under this section by civil action brought in the name of the district in any court of competent jurisdiction. In addition to the amount found due, together with interest and costs, the district also may recover such sum as the court may adjudge reasonable as attorney's fees in said action.

**History.**

I.C., § 42-5259, as added by 1995, ch. 290, § 1, p. 982; am. 2005, ch. 367, § 18, p. 1155.

**Compiler's Notes.** Section 17 of S.L. 2005, ch. 367 is compiled as § 42-5256.

Section 19 of S.L. 2005, ch. 367 provided "Severability. The provisions of this act are hereby declared to be severable and if any

provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Section 20 of S.L. 2005, ch. 367 declared an emergency. Approved April 12, 2005.





# TITLE 43

## IRRIGATION DISTRICTS

### CHAPTER.

1. ORGANIZATION OF DISTRICT, §§ 43-111, 43-112, 43-119.
2. ELECTION OF DIRECTORS, §§ 43-201 — 43-202, 43-208, 43-219.
3. POWERS AND DUTIES OF BOARD OF DIRECTORS, §§ 43-318A, 43-343.
4. BONDS — ISSUANCE, CONFIRMATION AND SALE, § 43-401.
7. LEVY AND COLLECTION OF ASSESSMENTS, §§ 43-707A, 43-712.
8. REPOSSESSION OF WATER RIGHTS UPON ISSUANCE OF TAX DEED, §§ 43-803, 43-804.

### CHAPTER.

9. CONSTRUCTION WORK AND ACQUIREMENT OF PROPERTY, §§ 43-901, 43-903.
11. EXCLUSION OF LANDS FROM DISTRICT, §§ 43-1106, 43-1118, 43-1122 — 43-1131.
13. DISSOLUTION AND MODIFICATION OF DISTRICTS, §§ 43-1314 — 43-1325.
15. MISCELLANEOUS PROVISIONS OF DISTRICT LAW, § 43-1510.
18. COOPERATION WITH FEDERAL GOVERNMENT, § 43-1808.
25. LOCAL IMPROVEMENT DISTRICTS, §§ 43-2504, 43-2506 — 43-2508, 43-2511.

## CHAPTER 1

### ORGANIZATION OF DISTRICT

#### SECTION.

- 43-111. Qualifications of voters — Votes based on assessed acres.
- 43-112. Conduct of elections.

#### SECTION.

- 43-119. Rights and privileges of corporations — Limited liability companies — Partnerships — Trusts.

### **43-111. Qualifications of voters — Votes based on assessed acres.**

— (1) No person shall be entitled to vote at any election held under the provisions of this title for the purpose of electing directors, for the purpose of determining whether indebtedness shall be created or bonds issued by the district, or for any other purpose, unless he shall possess all the qualifications required of electors under the general laws of the state, and own land within the district, or the proposed district, and be a resident of the county in which the district, or a portion thereof, is located for a period of thirty (30) or more days next preceding the election; provided that the bylaws may, by resolution of two-thirds (2/3) of the board and adoption by two-thirds (2/3) of the electors voting in a district election conducted in accordance with the general election laws of the state applicable to irrigation districts, set forth a provision allowing a district landowner to vote, if the landowner possesses all the qualifications required of electors under the general laws of the state and has resided within fifteen (15) miles of the district for a period of at least thirty (30) days prior to the election.

(2) After approval by a majority of the electors voting upon the issue in a district election conducted using the elector criteria of subsection (1) of this section, in subsequent district elections, a person having the qualifications described in subsection (1) of this section shall have the right to cast one (1) vote for each acre of assessed land and a proportionate vote for each fraction of an acre of assessed land owned by him within the district. Co-owners or multiple owners of parcels of land shall cast no more than the total number of votes represented by the acres or fraction of acres of assessed land within the district.

**History.**

1903, p. 150, § 2b, as added by 1907, p. 484, § 1; reen. R.C., § 2375; am. 1915, ch. 49, § 1, last part of subd. 2375, p. 136; reen. C.L., 2375a; C.S., § 4323; I.C.A., § 42-111; am. 1933, ch. 27, § 1, p. 36; am. 1951, ch. 27, § 1, p. 39; am. 1982, ch. 254, § 11, p. 646; am. 1999, ch. 207, § 1, p. 554; am. 2006, ch. 200, § 1, p. 616; am. 2007, ch. 160, § 1, p. 483.

**Compiler's Notes.** The 2006 amendment, by ch. 200, added "Votes based on assessed acres" to the end of the section heading; added the subsection (1) designation; and added subsection (2).

The 2007 amendment, by ch. 160, deleted "in districts of fifteen thousand (15,000) acres or less" following "provided that" near the middle of subsection (1).

**43-112. Conduct of elections.** — (1) Such election shall be conducted as nearly as practicable in accordance with the general laws of the state: provided, no particular form of ballot shall be required, and that the provisions of the election laws as to the form and distribution of ballots shall not apply.

Said board of county commissioners shall establish one (1) or more election precincts, not exceeding seven (7), as may be necessary, and define the boundaries thereof, which boundaries, when the district is divided into precincts, shall be the same as the division boundaries above-provided for and which said precincts may thereafter be changed by the board of directors of such district as may be necessary: provided, that districts containing more than ten thousand (10,000) acres shall have not less than three (3), nor more than seven (7) voting precincts.

Said board shall also appoint three (3) judges of election for each such election precinct, who shall perform the same duties as near as may be as judges of election, under the general laws of the state.

(2) When an irrigation district has duly adopted the voting system set forth in subsection (2) of section 43-111, Idaho Code, and a person seeks to vote at any district election, following completion of an electors oath as required by section 43-113, Idaho Code, one (1) of the judges of election shall deliver to the elector the number of ballots for the votes the elector is entitled to cast, as shown by the registrar's list of assessed lands within the district.

**History.**

1903, p. 150, § 3; am. 1907, p. 484, § 1; R.C., § 2376; am. 1915, ch. 47, § 1, p. 134; reen. C.L., § 2376; C.S., § 4324; am. 1925, ch. 123, § 1, p. 169; I.C.A., § 42-112; am. 2006, ch. 200, § 2, p. 616.

**Compiler's Notes.** The 2006 amendment, by ch. 200, added the subsection (1) designation and added subsection (2).

**43-114. Canvass of votes — Completion of organization.**

**Compiler's Notes.** The historical citation for this section contains a typographical error in the bound volume. The citation should read: [1903, p. 150, part of 3a, as added by

1907, p. 484, § 1; reen. R.C., § 2377; am. 1915, ch. 143, § 2, p. 304; reen. C.L., § 2377; C.S., § 4326; I.C.A., § 42-114.]

**43-119. Rights and privileges of corporations — Limited liability companies — Partnerships — Trusts.** — A corporation, the stock of which is owned entirely by natural persons related by blood or affinity, a limited liability company, in which all the members are natural persons related by blood or affinity, a partnership, in which all the partners are



natural persons related by blood or affinity, and a trust, in which all of the beneficiaries are natural persons related by blood or affinity, shall have the same rights and privileges in the conduct of irrigation district business as do natural persons, including, but not limited to, voting in elections and signing petitions. A corporation shall vote or otherwise act through its majority shareholder; a limited liability company shall vote or otherwise act, if member-managed, through its member and, if manager-managed, through its manager; a partnership shall vote or otherwise act through its majority partner; a trust shall vote or otherwise act through its trustee. For voting purposes the residence of such person shall establish the residence of the corporation, limited liability company, partnership or trust. If there is no single majority stockholder, no single majority member, no single manager, no single majority partner or no single trustee, then the corporation, limited liability company, partnership or trust must furnish the irrigation district a written designation stating the name of the stockholder, manager or member, partner or trustee who is authorized to vote and otherwise act for the corporation, limited liability company, partnership or trust, respectively. If the majority or designated stockholder, manager or member, partner or trustee is married, his or her spouse shall have the same rights and privileges in the conduct of irrigation district business as do the spouses of individual land owners in the district. A person, or the spouse of a person, voting for a corporation, limited liability company, partnership or trust shall not be entitled to vote again as an individual.

**History.**  
I.C., § 43-119, as added by 1983, ch. 49, § 1, p. 120; am. 2010, ch. 142, § 1, p. 299; am. 2013, ch. 333, § 1, p. 870.  
**Compiler's Notes.** The 2010 amendment, by ch. 142, rewrote the section, clarifying the

right of a trust to vote in irrigation district elections in the same manner as corporations and partnerships.  
The 2013 amendment, by ch. 333, rewrote the section to the extent that a detailed comparison is impracticable.

CHAPTER 2

ELECTION OF DIRECTORS

SECTION.  
43-201. Election, term of office, nominations and qualifications.  
43-201A. When election not required.

SECTION.  
43-202. Director's Oath and bond.  
43-208. Canvass of returns.  
43-219. Petition — Form.

**43-201. Election, term of office, nominations and qualifications.**  
— (1) Following the organization of any district, an election shall be held in accordance with section 34-106, Idaho Code, at which shall be elected one (1) director for each division of said district by the electors of the district at large.  
(2) The term of office of the directors shall, immediately after the first election following such organization, be selected by lot so that as nearly as may be, one-third (1/3) of the number shall hold office for the term of one (1) year; one-third (1/3) for the term of two (2) years, and the balance for the term of three (3) years. An election shall be held in the district each year thereafter in accordance with section 34-106, Idaho Code, to elect directors

to succeed those whose terms expire. Each director's term of office shall commence on the regularly scheduled board meeting closest to the date specified for taking office in section 34-106, Idaho Code, and shall continue for a term of three (3) years and until their successors are elected and qualified. If no director is elected and qualified at the end of an incumbent director's three (3) year term, an election shall be held at the next regular election of the irrigation district for the incumbent director's successor to hold office for the remainder of the unexpired term. This election requirement shall apply retroactively where an incumbent director remains in office on the date of the effective date of this act because the incumbent's successor was not elected and qualified in the 2012 election.

(3) Every director must be a qualified elector and a resident of the division of the director whom he is to succeed in office; provided that the bylaws may, by resolution of two-thirds (2/3) of the board and adoption by two-thirds (2/3) of the electors voting in a district election conducted in accordance with the general election laws of the state applicable to irrigation districts, set forth a provision allowing a district landowner to serve as the director from the division in which the landowner owns land, if the landowner possesses all the qualifications required of electors under the general laws of the state and has resided within fifteen (15) miles of the district for a period of at least thirty (30) days prior to the election; provided further that any landowner who owns land in more than one (1) division may serve as the director only from the division nearest which he resides.

(4) Candidates for election to the office of director of an irrigation district shall be nominated by nominating petitions on forms provided by the district. Each nominating petition shall:

- (a) Identify the name of the nominee;
- (b) Identify the office for which the nomination is made;
- (c) Identify the term for which nomination is made;
- (d) Be signed by at least six (6) electors in districts having less than one hundred (100) resident electors and by at least twelve (12) electors in districts having more than one hundred (100) resident electors; and
- (e) Be filed with the secretary of the district not less than forty (40) days nor more than sixty (60) days before the date of election; and the names of the persons so nominated shall be placed upon official ballot to be furnished by the district.

(5) Each nominee shall subscribe to a nominee's oath on a form provided by the irrigation district, and shall submit the oath to the secretary of the district with the written nomination. The oath shall:

- (a) Identify the land the nominee owns within the district;
- (b) Provide the address of the nominee's residence;
- (c) Certify that the nominee meets the qualification requirements of section 43-111, Idaho Code; and
- (d) Certify that the nominee will meet such requirements on the date of election.

The secretary of the district shall verify the qualifications of each nominee and shall, no more than seven (7) days after the close of filing, certify the qualified nominees for inclusion on the election ballot. If at any time prior to

the election, circumstances change so that a nominee no longer meets the qualification requirements of section 43-111, Idaho Code, the nominee shall be disqualified, shall not take office if elected and shall immediately file with the secretary of the district a written withdrawal of his nomination for the office of director. The secretary shall not place on the election ballot the name of any candidate that does not meet the qualification requirements of section 43-111, Idaho Code.

#### History.

1903, p. 150, part of § 4; R.C., § 2378; am. 1915, ch. 48, § 1, part of subd. 2378, p. 135; am. 1917, ch. 90, § 1, p. 313; reen. C.L., § 2378; C.S., § 4330; am. 1929, ch. 110, § 1, p. 178; I.C.A., § 42-201; am. 1957, ch. 147, § 1, p. 247; am. 1981, ch. 166, § 1, p. 292; am. 1995, ch. 125, § 1, p. 541; am. 1999, ch. 207, § 2, p. 554; am. 2006, ch. 124, § 1, p. 357; am. 2008, ch. 212, § 1, p. 668; am. 2013, ch. 133, § 1, p. 304.

**Compiler's Notes.** The 2006 amendment,

by ch. 124, substituted "forty (40) days nor more than sixty (60) days" for "twenty (20) days nor more than forty (40) days" near the end of the section.

The 2008 amendment, by ch. 212, in the fourth sentence, deleted "in districts of fifteen thousand (15,000) acres or less" following "provided that."

The 2013 amendment, by ch. 133, rewrote the section, adding the subsection designations and subsection (5).

**43-201A. When election not required.** — In any election for directors if, after the expiration of the date for filing written nominations for the office of director, it appears that only one (1) qualified candidate has been nominated thereby for a position to be filled, it shall not be necessary to hold an election for that position, and the board of directors shall declare such candidate elected as director at the next regularly scheduled board meeting following the expiration of the date for filing written nominations. Following the board's declaration, the secretary shall immediately make and deliver to such person a certificate of election signed by him or her and bearing the seal of the district. The procedure set forth in this section shall not apply to any other irrigation district election.

#### History.

I.C., § 43-201A, as added by 1979, ch. 293, § 1, p. 771; am. 2012, ch. 119, § 1, p. 335.

**Compiler's Notes.** The 2012 amendment, by ch. 119, substituted "at the next regularly scheduled board meeting following the expi-

ration of the date for filing written nominations" for "within five (5) days after expiration of the date for filing written nominations" at the end of the first sentence and made stylistic changes.

**43-202. Director's Oath and bond.** — On the date a director's term of office is to begin, at the meeting of the irrigation district's board of directors as provided in section 43-201(2), Idaho Code, the person that has been elected shall: (1) take and subscribe the official oath required by section 59-401, Idaho Code, in which the person shall verify that he or she meets the qualification requirements of section 43-111, Idaho Code; (2) be presented a certificate of election; (3) execute a bond if one (1) is hereinafter required; and (4) assume the duties of the office of director. The incumbent director's term of office shall be terminated upon the next director's assumption of office as provided in this section. Each director shall file the same in the office of the board of directors, and execute the bond hereinafter provided for. Each member of said board of directors shall execute an official bond in the sum of not less than five hundred dollars (\$500) nor more than five thousand



dollars (\$5,000), the amount to be determined and approved by the judge of the probate court of said county where such organization was effected and shall be recorded in the office of the county recorder thereof and filed with the secretary of said board. All official bonds provided for in this title shall be in the form prescribed by law for the official bond of county officers. If the district obtains a surety bond, blanket surety bond or crime insurance coverage pursuant to the applicable provisions of chapter 8, title 59, Idaho Code, the directors shall not be required to post a bond under the provisions of this section.

**History.**

1903, p. 150, part of § 4; reen. R.C., § 2378; am. 1915, ch. 48, § 1, p. 135; am. 1917, ch. 90, § 1, part of subd. 2378, p. 313; reen. C.L., § 2378a; C.S., § 4331; I.C.A., § 42-202; am. 2010, ch. 285, § 1, p. 766; am. 2013, ch. 133, § 2, p. 304.

**Compiler's Notes.** The 2010 amendment, by ch. 285, inserted "five hundred dollars" and "five thousand dollars" in the second sentence and added the last sentence.

The 2013 amendment, by ch. 133, added "Director's" to the section heading; and rewrote the first sentence, which formerly read: "Within ten (10) days after receiving the certificate of election hereinafter provided for, said officers shall take and subscribe the official oath and file the same in the office of the board of directors, and execute the bond hereinafter provided for" as the first two sentences of the present section.

**43-208. Canvass of returns.** — The board of directors must meet at its usual place of meeting on or before the next regularly scheduled board meeting following each election to canvass the returns, and they shall proceed in the same manner and with like effect, as near as may be, as the board of county commissioners in canvassing the returns of general elections, and when they shall have declared the result, the secretary shall enter a statement of the result on the records of the board of directors as required by section 43-213, Idaho Code. The board of directors must declare elected the person or persons having the highest number of votes for each office.

**History.**

1903, p. 150, part of § 6; am. 1907, p. 484, § 1, part of subd. 6; reen. R.C., § 2380; am. 1915, ch. 87, § 1, p. 205; reen. C.L., § 2380a; C.S., § 4337; I.C.A., § 42-208; am. 2008, ch. 207, § 1, p. 661; am. 2013, ch. 133, § 3, p. 304.

**Compiler's Notes.** The 2008 amendment, by ch. 207, inserted "or before" near the beginning of the first sentence.

The 2013 amendment, by ch. 133, in the first sentence, substituted "next regularly

scheduled board meeting following" for "first Monday after" and "enter a statement of the result on the records of the board of directors as required by section 43-213, Idaho Code" for "make full entries in his records in like manner as is required of the county recorder in general elections"; and deleted the last sentence, which formerly read: "The secretary must, immediately, make out and deliver to such person or persons a certificate of election signed by him and authenticated with the seal of the board."

**43-219. Petition — Form.** — Recall petitions shall be printed on single sheets of paper of good writing quality including, but not limited to, newsprint not less than eight and one-half (8 1/2) inches in width and not less than fourteen (14) inches in length. No petition may be circulated or signed prior to the approval of a ballot synopsis by the magistrate court. Such petitions shall be substantially in the following form:

WARNING

Every person who signs this petition with any other than his true name, or who knowingly (1) signs more than one (1) of these petitions, (2) signs this petition when he is not a legal voter, or (3) makes herein any false statement, may be fined, or imprisoned, or both.

Petition for the recall of (here insert the name of the person whose recall is petitioned for) to the (here insert the name and title of the secretary of the irrigation district with whom the charge is filed).

We, the undersigned citizens and legal voters of (the irrigation district's official name), respectfully direct that a special election be called to determine whether or not (here insert the name of the person) be recalled and discharged from his office; and each of us for himself says: I have personally signed this petition; I am a legal voter of the state of Idaho in (the irrigation district's official name) and county written after my name, and my residence address is correctly stated, and to my knowledge, have signed this petition only once.

Each and every signature sheet of each petition containing signatures shall be verified on the face thereof in substantially the following form by the person who circulated said sheet of the petition, by his or her affidavit thereon, as a part thereof:

State of Idaho )

) ss.

County of )

I, ....., swear, under penalty of perjury, that every person who signed this sheet of the foregoing petition signed his or her name thereto in my presence. I believe that each has stated his or her name and the accompanying required information on the signature sheet correctly, and that the person was eligible to sign this petition.

(Signature) .....

Post Office address .....

.....

Subscribed and sworn to before me this .... day of ....., ....

(Notary Seal) .....

Notary Public

Residing at .....

**History.**  
I.C., § 43-219, as added by 1989, ch. 337,  
§ 1, p. 849; am. 2007, ch. 90, § 23, p. 246.

**Compiler's Notes.** The 2007 amendment,  
by ch. 90, deleted the twentieth century ref-  
erence in the date line in the form.

CHAPTER 3

POWERS AND DUTIES OF BOARD OF DIRECTORS

SECTION.  
43-318A. Trade-in or exchange of district  
property.  
43-343. Authority to construct and operate

ground water recharge proj-  
ect.

**43-304. General powers of board — By-laws — Right of entry — Acquisition of property.**

**ANALYSIS**

By-laws.  
Powers limited.

**By-laws.**

Irrigation district had the authority to amend its by-laws and to use them to impose and amend the connection fee. *Viking Constr., Inc. v. Hayden Lake Irrigation Dist.*, 149 Idaho 187, 233 P.3d 118 (2010), overruled on

other grounds, *Verska v. St. Alphonsus Med. Ctr.*, 151 Idaho 889, 265 P.3d 502 (2011).

**Powers Limited.**

This section grants the directors of an irrigation district the power to establish equitable by-laws, rules and regulations for the distribution and use of water among the owners of such land, as may be necessary and just to secure the just and proper distribution of the same. *Nelson v. Big Lost River Irrigation Dist.*, 148 Idaho 157, 219 P.3d 804 (2009).

**43-316. Legal title to property.**

**Cited in:** *Nelson v. Big Lost River Irrigation Dist.*, 148 Idaho 157, 219 P.3d 804 (2009).

**ANALYSIS**

Beneficial use.  
In general.

**Beneficial Use.**

Where the United States bureau of reclamation (BOR) filed water right claims against irrigation entities regarding projects developed pursuant to the Reclamation Act of 1902, any rights held by BOR were subject to rights of the beneficial users that were served by the irrigation districts because, inter alia, (1) fed-

eral law deferred to state law in determining the rights to water in the reclamation projects, (2) the beneficial users had an interest that was stronger than mere contractual expectancy, and (3) title to the use of the water was held by the consumers or users of the water. *United States v. Pioneer Irrigation Dist. (In re SRBA Case No. 3957)*, 144 Idaho 106, 157 P.3d 600 (2007).

**In General.**

Entity that applies the water to beneficial use has a right that is more than a contractual right. *United States v. Pioneer Irrigation Dist. (In re SRBA Case No. 3957)*, 144 Idaho 106, 157 P.3d 600 (2007).

**43-318A. Trade-in or exchange of district property. —** Whenever the board of directors of an irrigation district finds and by resolution declares that the district no longer has use for any personal property of the district, or finds and declares that such property is no longer economical to use, the district may, in lieu of the sale of said property as provided in section 43-318, Idaho Code, dispose of the property by exchanging the same in part payment for new or replacement property.

If the acquisition of the new or replacement property is required to be let to bid under the provisions of chapter 28, title 67, Idaho Code, the district shall include in its request for bids, a full description of the property to be exchanged as part payment, and shall permit any interested bidder to examine the same, and any contract let as a result of said bid shall be awarded on the basis of net cost to the district after allowance for the property to be exchanged in part payment.

Exchange of property will be permitted only when, in the opinion of the board of directors of the district, the sale of the property under the provisions of section 43-318, Idaho Code, will yield a lesser monetary return to the district than the exchange thereof as herein provided.

**History.**

I.C., § 43-318A, as added by 1988, ch. 160, § 1, p. 290; am. 2005, ch. 213, § 13, p. 637.

**Compiler's Notes.**

Sections 12 and 14 of S.L. 2005, ch. 213 are compiled as §§ 42-4416 and 43-901, respectively.



**43-343. Authority to construct and operate ground water recharge project.** — Any irrigation district heretofore or hereafter organized under the laws of this state, having received and affirmatively acted upon a petition to construct a ground water recharge improvement project in the manner provided by sections 43-328, 43-329 and 43-330, Idaho Code, is authorized by section 42-234, Idaho Code, to file an application with the department of water resources to appropriate the unappropriated waters of the state for the purpose of recharging ground water basins within the district to aid in the efficient irrigation of district lands. Upon approval of the application for permit by the director of the department of water resources, the district shall proceed in the manner provided by the irrigation district laws of the state to construct and operate the recharge project. The construction and operation of the project shall be subject to such additional conditions and limitations as shall be imposed by the director of the department of water resources pursuant to sections 42-203A and 42-234, Idaho Code.

**History.**  
I.C., § 43-343, as added by 1985, ch. 120,  
§ 4, p. 292; am. 2009, ch. 242, § 5, p. 743.  
**Compiler's Notes.** The 2009 amendment,

by ch. 242, in the first and last sentences  
substituted "42-234" for "42-4201A" and sub-  
stituted "42-203A" for "42-203" in the last  
sentence.

CHAPTER 4

BONDS — ISSUANCE, CONFIRMATION AND SALE

SECTION.  
43-401. Plan of construction — Issuance of

bonds — Indebtedness —  
Election.

**43-401. Plan of construction — Issuance of bonds — Indebtedness — Election.** — As soon as practicable after the organization of any such district the board of directors shall, by a resolution entered on its records, formulate a general plan of its proposed operations, in which it shall state what constructed works or other property it proposes to purchase and the cost of purchasing the same; and further what construction work it proposes to do and how it proposes to raise the funds for carrying out said plan. For the purpose of ascertaining the cost of any such construction work, said board shall cause such surveys, examinations and plans to be made as shall demonstrate the practicability of such plan, and furnish the proper basis for an estimate of the cost of carrying out the same. All such surveys, examinations, maps, plans and estimates, shall be made under the direction of a competent irrigation engineer and certified by him. Said board shall then submit a copy of the same to the department of water resources, and within ninety (90) days thereafter the department shall file a report upon the same with said board, which report shall contain such matters as, in the judgment of the department may be desirable.

Upon receiving said report said board of directors shall proceed to determine the amount of money necessary to be raised, and shall immediately thereafter call a special election, at which shall be submitted to the electors of said district possessing the qualifications hereinafter prescribed the question whether or not the bonds of said district, or the right to enter

into an obligation with the United States in the manner hereinafter in this title provided, or whether a contractual arrangement with a money-lending institution in the amount as determined, shall be authorized.

Notice of such election must be given by posting notices in three (3) public places in each election precinct in said district at least four (4) weeks before the date of said election, and by publication of the same once a week for four (4) consecutive weeks in a newspaper having general circulation within the district. Notice given by publication in a weekly newspaper shall be published in four (4) consecutive issues thereof, or if in a daily newspaper, at least six (6) days shall elapse between the first and last dates of publication, and in either case, publication shall be completed not less than fifteen (15) days before the election. Such notice must specify the time of holding the election, the qualifications of voters, the amount of bonds proposed to be issued, and, in case such maps and estimates have been made, it shall further state that copies thereof, and in all cases it shall state that said report of the department of water resources, are on file and open to public inspection by the people of the district, at the office of said board and at the office of the department of water resources.

No person who is not a resident holder of title or evidence of title to lands located and subject to assessment within such district, or the wife or husband of such holder of title or evidence of title, shall be entitled to vote at such election. Otherwise said election must be held and the results thereof determined and declared in all respects as nearly as practicable in conformity with the provisions of this title governing the election of officers: provided, that no informalities in conducting such an election shall invalidate the same if the election shall have been otherwise fairly conducted. At such election the ballots shall contain the words "bonds—yes" or "bonds—no," or other words equivalent thereto. If two-thirds (2/3) of the votes cast are "bonds—yes" the board of directors shall cause bonds in said amount to be issued; if more than one-third (1/3) of the votes cast at any bond election are "bonds—no" the result of such election shall be so declared and entered of record.

And whenever thereafter said board in its judgment deems it for the best interest of the district that the question of the issuance of bonds in said amount, or any other amount, shall be submitted to the electors, it shall so declare of record in its minutes, and may thereupon submit such questions to said electors in the same manner and with like effect as at such previous election.

#### **History.**

1903, p. 150, § 15; am. 1907, p. 484, § 1, subd. 15; reen. R.C., § 2396; am. 1915, ch. 143, § 5, p. 304; compiled and reen. C.L., § 2396; C.S., § 4359; am. 1929, ch. 177, § 1, p. 311; I.C.A., § 42-401; am. 1959, ch. 223, § 1, p. 488; am. 1976, ch. 251, § 1, p. 857; am. 2001, ch. 183, § 19, p. 613; am. 2006, ch. 124, § 2, p. 357.

**Compiler's Notes.** The 2006 amendment, by ch. 124, in the third paragraph, substi-

tuted "by publication of the same once a week for four (4) consecutive weeks in a newspaper having general circulation within the district" for "the publication thereof for the same length of time in some newspaper published in the district, and in case no paper is published in the district, then in a paper published in each county in which the district or any part thereof is located" at the end of the first sentence and added the second sentence.

## CHAPTER 7

## LEVY AND COLLECTION OF ASSESSMENTS

## SECTION.

43-707A. Acceptance of bank drafts or checks.

## SECTION.

43-712. Delinquent assessments — Redemption of land.

**43-704. Levy of assessments.****Application.**

Connection fee imposed under subsection (e) of § 43-1909 was not an assessment under this section. *Viking Constr., Inc. v. Hayden*

*Lake Irrigation Dist.*, 149 Idaho 187, 233 P.3d 118 (2010), overruled on other grounds, *Verska v. St. Alphonsus Med. Ctr.*, 151 Idaho 889, 265 P.3d 502 (2011).

**43-707A. Acceptance of bank drafts or checks.** — (1) Notwithstanding any other provisions of title 43, Idaho Code, irrigation district treasurers may accept personal or other nonguaranteed forms of bank drafts or checks if (1) the remitter identifies by legal description the parcel for which the payment is tendered, (2) the amount for which the draft or check is presented is the exact amount of the assessment due, including, where a delinquency exists and a tax deed has not been issued, penalties, interest and county redemption fees. The following procedures shall be followed in processing payments by bank drafts or checks:

(a) The assessment number of the identified parcel shall be entered on the draft or check.

(b) The treasurer shall prepare the current tax receipt or redemption certificate or both, and deliver them to the remitter. Such receipts shall be invalid, and shall so state, if payment of the draft or check is refused by the bank or other entity on which it is drawn. Any drafts or checks upon which payment has been refused will be noted in the records of the treasurer and notice of nonpayment shall be delivered to the county recorder. The notation and notice of nonpayment shall be sufficient reversal of any entries made upon the books of the district treasurer and upon the lien records of the county recorder.

(c) Notice shall be sent to the remitter that payment has not been received, that receipts and releases are therefore invalid and withdrawn and that the draft or check can be redeemed by payment with United States currency or a guaranteed bank draft or money order in the amount of the original draft or check plus the additional interest accrued, plus a repetition of the county filing fees and plus a handling charge not to exceed twenty-five dollars (\$25.00).

(2) Full compliance with procedures enumerated in this section shall exempt the treasurer from any personal liability for the acceptance of bank drafts or checks.

**History.**

I.C., § 43-707A, as added by 1983, ch. 168, § 1, p. 475; am. 2006, ch. 255, § 1, p. 792.

**Compiler's Notes.** The 2006 amendment,

by ch. 255, substituted "twenty-five dollars" for "ten dollars" in subsection (1)(c).



**43-712. Delinquent assessments — Redemption of land.** — After delinquency and prior to three (3) years from the date of entry of such delinquency, and thereafter until assessment deed is issued by the treasurer, redemption of lands may be made by paying to the treasurer an amount equal to the delinquent assessments thereon, plus the penalty of two percent (2%) thereon, together with interest at the rate of one percent (1%) per month from the date of delinquency entry until paid. Upon redemption, the treasurer shall note the redemption on the delinquent list and shall issue a redemption certificate in triplicate, showing the name of the redemptioner, the amount paid in redemption, description of lands redeemed, year in which assessment was levied, and the delinquency entry number, delivering one (1) copy to the redemptioner, and in case the land being redeemed has been included in a list filed with the county recorder, he shall file one (1) copy with the county recorder of the county in which the land is located, and thereupon the county recorder shall enter the redemption opposite the corresponding entry in his record of delinquent assessments, for which service he shall be entitled to charge a fee as provided by section 31-3205, Idaho Code, which fee shall be added to the amount necessary for redemption paid by the redemptioner, and be transmitted to the county recorder by the district treasurer.

If the property on which the assessments are delinquent is not redeemed within the time hereinbefore limited, and if the assessment deed for the delinquency is made by the treasurer to the district, such property may nevertheless be redeemed by the owner thereof, or by any party in interest, up to the time a sale of the property is made by the board of directors and deed or contract for sale is delivered to the purchaser, by paying to the district treasurer the amount of all unpaid assessments levied or assessed against the said property to the time of redemption together with penalty and interest thereon and also by paying assessments for the year or years since the date of issuance of assessment deed to the district together with penalty and interest thereon, and all costs incurred for a sale of the property by the district, and the sum of two dollars (\$2.00) for redemption deed from the district, and all other fees and charges for redemption otherwise prescribed by law. All assessments accruing against such property subsequent to the issuance of deed to the district shall be extended by the treasurer and be computed according to the authorized levies for the year or years to be extended. Upon payment to the district treasurer of the amounts required to be paid as herein provided, the district treasurer must issue a redemption deed to the redemptioner.

**History.**

C.S., § 4389E, as added by 1925, ch. 128, § 1, p. 173; I.C.A., § 42-712; am. 1937, ch. 110, § 2, p. 165; am. 1970, ch. 96, § 1, p. 243; am. 1984, ch. 174, § 1, p. 419; am. 2013, ch. 61, § 1, p. 136.

**Compiler's Notes.** The 2013 amendment, by ch. 61, in the first sentence, substituted "one percent (1%) per month" for "eight per cent (8%) per annum."

## CHAPTER 8

## REPOSSESSION OF WATER RIGHTS UPON ISSUANCE OF TAX DEED

## SECTION.

43-803. Notice of election by district — Reservation of title to water right.

## SECTION.

43-804. Redemption or repurchase of water rights.

**43-803. Notice of election by district — Reservation of title to water right.** — To constitute an election as provided in section 43-801, Idaho Code, the irrigation district shall, at least ten (10) days prior to the date of the issuance of tax deed to the county treasurer on behalf of any taxing unit, or at least ten (10) days prior to the date of any sale of real property acquired by a county on account of delinquent taxes, file with the county treasurer and the clerk of the board of county commissioners of the county a notice in writing, in substantially the following form:

“Notice is hereby given that . . . irrigation district has elected to accept a cancellation of taxes in favor of said irrigation district and constituting part of the taxes delinquent upon which tax deed may or has issued and in lieu thereof to retain title to the water right for the purchase of which the assessments in favor of the irrigation district were levied. The property affected by this notice is described as follows, to wit:  
(....)”

Upon the issuance of a tax deed to any lands within an irrigation district organized as aforesaid for delinquent taxes or a sale of any lands acquired by a county on account of delinquent taxes, the receipt of this notice by the county treasurer or the clerk of the board of county commissioners of the county, substantially in form as herein provided, shall be recorded in the chain of title of the subject real property and shall obligate the officer accepting a deed on behalf of a taxing unit and/or the officers executing a deed to lands acquired by the county for delinquent taxes, to reserve title to the water right and title to said water right shall thereupon vest in the irrigation district subject to redemption as hereinafter provided; provided, however, said irrigation district shall as a prerequisite to withdrawal of said water right from the lands and revesting thereof in said district, pay to the county the amount paid by the county to the state as state taxes levied against said lands from which said water right is to be withdrawn.

**History.**

1931, ch. 34, § 3, p. 67; I.C.A., § 42-803; am. 1933, ch. 112, § 1, p. 178; am. 2007, ch. 161, § 1, p. 484.

**Compiler's Notes.** The 2007 amendment,

by ch. 161, inserted “be recorded in the chain of title of the subject real property and shall” near the middle of the last paragraph.

**43-804. Redemption or repurchase of water rights.** — The purchaser of any lands within an irrigation district at a sale of lands acquired by a county on account of delinquent taxes, or the holder of a tax deed to any lands within an irrigation district, or the then owner of said lands, the water right to which has vested in said irrigation district under the provisions of this chapter, may, within six (6) months from the date of the issuance of the tax deed, or of the sale of said lands by the county, whichever is earlier,

appear before the board of directors of said irrigation district at a regular or special meeting of said board and make application to redeem or repurchase the water right originally bought for use and to be made appurtenant to said land, and the said board of directors shall, upon receipt of payment of all taxes formerly delinquent against said land in favor of the irrigation district and expenses incurred by the district in connection therewith, reinstate said water right and thereafter said land and water shall be subject to all of the charges required to be paid by lands within the district: provided, however, that during the interim between the issuance of the tax deed to the land, or the sale of said land by the county as herein referred to, and the date of the application to redeem, water represented by said water right shall not be delivered to the land except upon the express consent of the board of directors of the irrigation district.

Should no redemption be made as herein provided within the period herein stated, title to the water right shall vest absolutely in the irrigation district.

<p><b>History.</b> 1931, ch. 34, § 4, p. 67; I.C.A., § 42-804; am. 2007, ch. 161, § 2, p. 484.</p>	<p><b>Compiler's Notes.</b> The 2007 amendment, by ch. 161, inserted "whichever is earlier" near the middle of the first paragraph.</p>
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## CHAPTER 9

### CONSTRUCTION WORK AND ACQUIREMENT OF PROPERTY

<p><b>SECTION.</b> 43-901. Contracts for construction work and purchasing.</p>	<p><b>SECTION.</b> 43-903. Notice for bids dispensed with.</p>
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**43-901. Contracts for construction work and purchasing. —** The provisions relative to competitive bidding set forth in chapter 28, title 67, Idaho Code, apply to all irrigation districts of the state of Idaho, but shall be subject to the provisions of any specific statute pertaining to the letting of any contract, purchase or acquisition of any commodity or thing by soliciting and receiving competitive bids therefor, and shall not be construed as modifying or amending the provisions of any such statute, nor preventing the irrigation district from doing any work by its own employees.

<p><b>History.</b> I.C., § 43-901, as added by 1975, ch. 49, § 2, p. 94; am. 1983, ch. 27, § 1, p. 76; am. 1984, ch. 136, § 4, p. 321; am. 2002, ch. 100, § 1, p. 274; am. 2005, ch. 213, § 14, p. 637.</p>	<p><b>Compiler's Notes.</b> Sections 13 and 15 of S.L. 2005, ch. 213 are compiled as §§ 43-318A and 43-903, respectively.</p>
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**43-903. Notice for bids dispensed with. —** On the petition of fifty (50) or a majority of the owners of land in said district, to be determined as provided by section 43-101, Idaho Code, the board of directors may do any work mentioned in the preceding section on behalf of the district, and it may use the construction fund therefor; in such case they need not publish notice for bids as provided in section 43-901, Idaho Code.



**History.**

1903, p. 150, § 33a, as added by 1907, p. 484, § 1, subd. 33a; reen. R.C. & C.L., § 2417; C.S., § 4405; I.C.A., § 42-903; am. 2005, ch. 213, § 15, p. 637.

**Compiler's Notes.** Sections 14 and 16 of

S.L. 2005, ch. 213 are compiled as §§ 43-901 and 43-2508, respectively.

## CHAPTER 11

## EXCLUSION OF LANDS FROM DISTRICT

## SECTION.

43-1106. Appeal.

43-1118. Appeals — Procedure.

43-1122. Transfer of lands between districts.

43-1123. Resolution — Contents.

43-1124. Notice.

43-1125. Notice — Contents.

## SECTION.

43-1126. Hearing.

43-1127. Orders — Determinations.

43-1128. Entry and recording of orders.

43-1129. Effect of orders.

43-1130. Appeals — Procedure.

43-1131. Costs.

**43-1106. Appeal.** — An appeal shall lie from the decision of the board of directors of such irrigation district denying the petition or any part thereof to the district court of the county where the lands described in the petition are located. The appeal shall be taken in accordance with and shall be subject to the appeal provisions of section 43-719(4) and (5), Idaho Code. If an appeal results in an order of the district court excluding the lands described in the petition, or any of them, the time of segregation shall date from the date of the hearing before the board of directors of the district.

**History.**

R.C., § 2437; am. 1911, ch. 46, § 4, part of subd. 2437, p. 102; reen. C.L., § 2435b; C.S., § 4425; I.C.A., § 42-1104; am. and redesign. 1990, ch. 181, § 6, p. 386; am. 2012, ch. 143, § 1, p. 378.

**Compiler's Notes.** The 2012 amendment,

by ch. 143, rewrote the second sentence, which formerly read, "The appeal to be take in the same manner and within the same period of time as appeals are taken from decisions or orders of the board of county commissioners."

**43-1118. Appeals — Procedure.** — An appeal shall lie from the resolution or the order of the board of directors excluding, and from the order of the board of directors not excluding, lands covered by proceedings under sections 43-1110 through 43-1117, Idaho Code, or from any part of any such order. The appeal may be taken by any landowner in the district and by any person, firm or corporation having any interest in any tract of land included in any such order. The appeal shall be to the district court of the county where the lands involved in the appeal are located. The appeal shall be taken in accordance with and shall be subject to the appeal provisions of section 43-719(4) and (5), Idaho Code.

**History.**

1972, ch. 371, § 9, p. 1089; am. and redesign. 1990, ch. 181, § 18, p. 386; am. 2012, ch. 143, § 2, p. 378.

**Compiler's Notes.** The 2012 amendment,

by ch. 143, rewrote the last sentence, which formerly read, "The appeal shall be take in the same manner and within the same period of time as appeals from the board of county commissioners."

**43-1122. Transfer of lands between districts.** — The boards of directors of two (2) irrigation districts may by resolution declare and act upon their proposal to transfer lands from one (1) district to the other through exclusion and annexation in accordance with sections 43-1122

through 43-1129, Idaho Code. The district from which lands are proposed to be excluded shall be identified as the “excluding district.” The district to which lands are proposed to be annexed shall be identified as the “annexing district.”

**History.**

I.C., § 43-1122, as added by 2012, ch. 122,  
§ 1, p. 339.

**43-1123. Resolution — Contents.** — The districts proposing to transfer lands as authorized by section 43-1122, Idaho Code, shall adopt a resolution, either separately or jointly, which shall:

- (1) Identify the excluding district and the annexing district;
- (2) Provide a legal description of each lot or parcel proposed to be transferred;
- (3) Specify the name and address of each person in possession of each such lot or parcel and of each owner thereof as the ownership appears of record in the assessment rolls of the district and of each owner thereof as the ownership appears of record in the office of the county recorder of the county in which the land is situated and of each mortgagee and other lienholder whose mortgage or lien appears of record in the office of the county recorder of the county in which the land is situated;
- (4) Explain the reasons for the transfer including, but not limited to, that the transfer is in the best interests of the owner of the land proposed to be transferred and of the districts;
- (5) Describe the benefits that will be apportioned and provided to the proposed transferred lands by the annexing district;
- (6) Provide a statement of applicable levies by the annexing district in the year prior to the proposed transfer;
- (7) Describe the proposed method of water delivery from the annexing district to the lands proposed to be transferred;
- (8) Identify obligations of the excluding district that will continue to apply to the lands to be transferred;
- (9) State whether the lands proposed to be transferred will be retained within the excluding district for drainage purposes;
- (10) Fix the date, time and place for hearing on the proposed transfer, which time shall be not less than twenty-eight (28) days from the date of the adoption of the resolution(s); and
- (11) Recite any other information the districts deem to be pertinent to the proposed transfer.

**History.**

I.C., § 43-1123, as added by 2012, ch. 122,  
§ 2, p. 339.

**Compiler's Notes.** The “s” enclosed in parentheses so appeared in the law as enacted.

**43-1124. Notice.** — The secretaries of the excluding and annexing districts shall publish and provide notice of the hearing on the proposed transfer in the manner described in section 43-1112, Idaho Code. The secretaries may publish and provide such notice separately or jointly.

**History.**

I.C., § 43-1124, as added by 2012, ch. 122,  
§ 3, p. 339.

**43-1125. Notice — Contents.** — The notice required by section 43-1124, Idaho Code, shall contain:

- (1) The information identified in section 43-1123, Idaho Code; and
- (2) Notice to each person, firm, corporation and other legal entity interested in the proposed transfer to appear at the district office at the date and time fixed, and file objections in writing showing cause, if any they may have, why the land or any part of it should not be transferred as proposed in the resolution(s) of the boards of directors.

**History.**

I.C., § 43-1125, as added by 2012, ch. 122,  
§ 4, p. 339.

**Compiler's Notes.** The "s" enclosed in parentheses so appeared in the law as enacted.

**43-1126. Hearing.** — The boards of directors of the districts may hold separate hearings or a joint hearing on the proposed transfer. At such hearing(s), the boards of directors shall hear all of the objections presented to them in writing and all evidence introduced in support of the transfer and in support of the objections to the transfer.

**History.**

I.C., § 43-1126, as added by 2012, ch. 122,  
§ 5, p. 339.

**Compiler's Notes.** The "s" enclosed in parentheses so appeared in the law as enacted.

**43-1127. Orders — Determinations.** — After the hearing(s) on the transfer proposal, the boards of directors of the districts shall order the transfer of all or any part of the land described in the resolution when as to the lands to be excluded they determine that:

- (1) The transfer is in the best interests of the owner of the lands to be transferred and of the district;
- (2) The annexing district will apportion and provide comparable benefits to the lands to be transferred;
- (3) There will be no interruption in the delivery of water to the lands to be transferred as a result of the transfer; and
- (4) The ditch rights of other landowners in the same lateral ditch water users' association in the excluding district will not be injured.

**History.**

I.C., § 43-1127, as added by 2012, ch. 122,  
§ 6, p. 339.

**Compiler's Notes.** The "s" enclosed in parentheses so appeared in the law as enacted.

**43-1128. Entry and recording of orders.** — If the boards of directors determine from the hearing that all or part of the lands described in the resolution should be transferred from one (1) district to another, the boards shall enter orders as follows:

- (1) The board of the excluding district shall make and enter an order of exclusion that:
  - (a) Describes each lot or parcel being transferred;



- (b) Changes the boundaries of the district to exclude such lands;
- (c) States that the excluded lands shall not be entitled to receive water from the water rights or irrigation system of the excluding district;
- (d) States that the excluded lands shall remain part of the excluding district for drainage purposes if the excluded lands will continue to receive drainage benefits from the excluding district;
- (e) Identifies the obligations of the excluding district that will continue to apply to the lands to be transferred;
- (f) Recites any other information the districts deem to be pertinent to the proposed transfer; and
- (g) Provides that the order shall not become effective until the annexing district enters an order annexing the lands described in the exclusion order.

(2) The secretary of the excluding district shall deliver a copy of the exclusion order to the annexing district.

(3) As soon as practicable after receiving the exclusion order, the annexing district shall make and enter an order that the lands described in the exclusion order be annexed to the annexing district.

(4) After the annexing district has entered its order of annexation, copies of the orders of exclusion and annexation, certified by the presidents and secretaries of the districts, shall be recorded in the office(s) of the county recorder(s) of each county wherein any portion of the transferred lands are situated.

**History.**

I.C., § 43-1128, as added by 2012, ch. 122,  
§ 7, p. 339.

**Compiler's Notes.** The "s" enclosed in parentheses so appeared in the law as enacted.

**43-1129. Effect of orders.** — The order excluding the transferred lands from the excluding district shall have the same effect described in sections 43-1109 and 43-1119, Idaho Code. The order annexing the transferred lands to the annexing district shall have the same effect described in section 43-1009, Idaho Code.

**History.**

I.C., § 43-1129, as added by 2012, ch. 122,  
§ 8, p. 339.

**43-1130. Appeals — Procedure.** — An appeal shall lie from the orders of the boards of directors transferring lands covered by the procedures pursuant to sections 43-1122 through 43-1128, Idaho Code, and from any part of such orders. The appeal may be taken by any landowner in the excluding district or in the annexing district and by any person, firm, corporation or other entity having any interest in any tract of land included in such orders. The appeal shall be to the district court of the county where the lands involved in the appeal are located. The appeal shall be taken and shall be subject to the appeal provisions of section 43-719(4) and (5), Idaho Code.

**History.**

I.C., § 43-1130, as added by 2012, ch. 122,  
§ 9, p. 339.

**43-1131. Costs.** — All costs incurred by the districts in the transfer process provided by sections 43-1122 through 43-1128, Idaho Code, shall be divided equally between the districts, unless the districts agree upon a different apportionment of costs.

**History.**

I.C., § 43-1131, as added by 2012, ch. 122,  
§ 10, p. 339.

## CHAPTER 13

## DISSOLUTION AND MODIFICATION OF DISTRICTS

## SECTION.

43-1314. Petition.

43-1315. Submission of petition to county.

43-1316. Maps and water supply data.

43-1317. Bond.

43-1318. Notice of presentation to commissioners.

43-1319. Notice of hearing.

43-1320. Examination by department of water resources.

## SECTION.

43-1321. Order of the board.

43-1322. Divisions of district for election of directors.

43-1323. Effective date of partition — Challenges to partition.

43-1324. Joint works — Jointly held property.

43-1325. Joint operation.

**43-1314. Petition.** — The owners of a majority of the land in an irrigation district that is operated and maintained exclusively to deliver natural flow water rights, who also hold title to the water rights appurtenant to that land, and whose water rights are delivered by an organized irrigation district, may petition to partition the irrigation district into two (2) separate irrigation districts, which shall be known for purposes of this act as the new irrigation district and the remaining irrigation district. For each parcel of land that is proposed to be included in the new irrigation district, the petition shall set forth the following:

- (1) Irrigation district assessment number;
- (2) Tax lot or legal description to identify the property;
- (3) Owner of the property;
- (4) Individual water rights that are appurtenant to each property;
- (5) A general characterization of the property as agricultural, residential or commercial; and

(6) The number of divisions into which the district shall be divided. The petition must be signed by each landowner who desires to be included in the new irrigation district and their signature shall constitute consent to the partition and consent to have their water rights delivered and distributed by the new irrigation district.

**History.**

I.C., § 43-1314, as added by 2013, ch. 332,  
§ 2, p. 867.

**Compiler's Notes.** Section 1 of S.L. 2013, ch. 332 provided: "Legislative intent. The pur-

pose of this act is to authorize the owners of land within an irrigation district that delivers only natural flow water rights, whose land is served by the irrigation district and who own the water rights appurtenant to that land, to

partition the irrigation district into separate irrigation districts in order to preserve and protect the agricultural uses of the district lands, to provide for continuation of the irrigation of those lands and to set forth guidelines for ownership and operation of irrigation works between the newly partitioned irrigation districts.”

**43-1315. Submission of petition to county.** — The petition shall be filed with the clerk of the board of county commissioners of the county in which the greatest proportion of the proposed new irrigation district is situated. The petition, together with all maps and other papers filed therewith, shall at all proper hours be open to public inspection in the office of the clerk of the board between the date of the filing and the date of the hearing thereon.

**History.**

I.C., § 43-1315, as added by 2013, ch. 332, § 3, p. 867.

**Compiler’s Notes.** Section 1 of S.L. 2013, ch. 332 provided: “Legislative intent. The purpose of this act is to authorize the owners of land within an irrigation district that delivers only natural flow water rights, whose land is served by the irrigation district and who own the water rights appurtenant to that land, to

The term “this act” in the introductory paragraph refers to S.L. 2013, ch. 332, which is codified as §§ 43-1314 to 43-1325.

Section 15 of S.L. 2013, ch. 332 declared an emergency. Approved April 11, 2013.

partition the irrigation district into separate irrigation districts in order to preserve and protect the agricultural uses of the district lands, to provide for continuation of the irrigation of those lands and to set forth guidelines for ownership and operation of irrigation works between the newly partitioned irrigation districts.”

Section 15 of S.L. 2013, ch. 332 declared an emergency. Approved April 11, 2013.

**43-1316. Maps and water supply data.** — The petitioners must accompany the petition with a map of the proposed district. The map shall show the location of the canals situated within the boundaries of the proposed partitioned district.

**History.**

I.C., § 43-1316, as added by 2013, ch. 332, § 4, p. 867.

**Compiler’s Notes.** Section 1 of S.L. 2013, ch. 332 provided: “Legislative intent. The purpose of this act is to authorize the owners of land within an irrigation district that delivers only natural flow water rights, whose land is served by the irrigation district and who own the water rights appurtenant to that land, to

partition the irrigation district into separate irrigation districts in order to preserve and protect the agricultural uses of the district lands, to provide for continuation of the irrigation of those lands and to set forth guidelines for ownership and operation of irrigation works between the newly partitioned irrigation districts.”

Section 15 of S.L. 2013, ch. 332 declared an emergency. Approved April 11, 2013.

**43-1317. Bond.** — The petitioners shall accompany the petition with a bond to be approved by the board of county commissioners in double the amount of the probable cost of the county organizing a new irrigation district, conditioning that the bondsman will pay all costs, in the event the new irrigation district is not organized.

**History.**

I.C., § 43-1317, as added by 2013, ch. 332, § 5, p. 867.

**Compiler’s Notes.** Section 1 of S.L. 2013, ch. 332 provided: “Legislative intent. The purpose of this act is to authorize the owners of land within an irrigation district that delivers

only natural flow water rights, whose land is served by the irrigation district and who own the water rights appurtenant to that land, to partition the irrigation district into separate irrigation districts in order to preserve and protect the agricultural uses of the district lands, to provide for continuation of the irri-



gation of those lands and to set forth guidelines for ownership and operation of irrigation works between the newly partitioned irrigation districts.”

Section 15 of S.L. 2013, ch. 332 declared an emergency. Approved April 11, 2013.

**43-1318. Notice of presentation to commissioners.** — Upon filing of a petition with the clerk of the board of county commissioners, the clerk shall publish a notice that a petition for the partition of an irrigation district has been filed, setting forth the first signature on the petition. The notice shall provide the time at which the petition will be presented to the board, which shall be during a regular meeting of the board or during a special meeting called for that purpose. The notice shall be published at least two (2) weeks prior to the day upon which the petition is to be presented in a newspaper of general circulation in the county. If any portion of the proposed partitioned district be within another county or counties, the notice shall also be published in a newspaper of general circulation in each of those counties.

**History.**

I.C., § 43-1318, as added by 2013, ch. 332, § 6, p. 867.

**Compiler’s Notes.** Section 1 of S.L. 2013, ch. 332 provided: “Legislative intent. The purpose of this act is to authorize the owners of land within an irrigation district that delivers only natural flow water rights, whose land is served by the irrigation district and who own the water rights appurtenant to that land, to

partition the irrigation district into separate irrigation districts in order to preserve and protect the agricultural uses of the district lands, to provide for continuation of the irrigation of those lands and to set forth guidelines for ownership and operation of irrigation works between the newly partitioned irrigation districts.”

Section 15 of S.L. 2013, ch. 332 declared an emergency. Approved April 11, 2013.

**43-1319. Notice of hearing.** — When a petition is presented to the board, the board shall set a time for hearing, which time shall not be less than four (4) nor more than eight (8) weeks from the date of the presentation. Notice of the time of hearing shall be published by the board at least three (3) weeks prior to the time of hearing in a newspaper of general circulation published within each of the counties in which any part of the proposed partitioned district is situated.

**History.**

I.C., § 43-1319, as added by 2013, ch. 332, § 7, p. 867.

**Compiler’s Notes.** Section 1 of S.L. 2013, ch. 332 provided: “Legislative intent. The purpose of this act is to authorize the owners of land within an irrigation district that delivers only natural flow water rights, whose land is served by the irrigation district and who own the water rights appurtenant to that land, to

partition the irrigation district into separate irrigation districts in order to preserve and protect the agricultural uses of the district lands, to provide for continuation of the irrigation of those lands and to set forth guidelines for ownership and operation of irrigation works between the newly partitioned irrigation districts.”

Section 15 of S.L. 2013, ch. 332 declared an emergency. Approved April 11, 2013.

**43-1320. Examination by department of water resources.** — A copy of the petition and all maps and other papers filed with the board of county commissioners shall be filed in the office of the department of water resources by the board at least four (4) weeks prior to the date set for the hearing. The department may examine the petition, maps and other papers and if it deems it necessary, the department may prepare a report upon the

matter in such form as it deems advisable. Any report prepared by the department shall be submitted to the board a minimum of seven (7) calendar days before the hearing on the petition and shall be available for public inspection. It shall be the duty of the board to notify the department of water resources of the final action, either favorable or unfavorable, taken on a petition for the partition of an irrigation district.

**History.**

I.C., § 43-1320, as added by 2013, ch. 332, § 8, p. 867.

**Compiler's Notes.** Section 1 of S.L. 2013, ch. 332 provided: "Legislative intent. The purpose of this act is to authorize the owners of land within an irrigation district that delivers only natural flow water rights, whose land is served by the irrigation district and who own the water rights appurtenant to that land, to

partition the irrigation district into separate irrigation districts in order to preserve and protect the agricultural uses of the district lands, to provide for continuation of the irrigation of those lands and to set forth guidelines for ownership and operation of irrigation works between the newly partitioned irrigation districts."

Section 15 of S.L. 2013, ch. 332 declared an emergency. Approved April 11, 2013.

**43-1321. Order of the board.** — If it appears to the board of county commissioners that the holders of evidence of title to a majority of the acreage with water rights delivered by the irrigation district within the boundaries of an existing irrigation district have properly signed a petition and approved the partition of the irrigation district, that the holders of evidence of title to such land signing the petition are also holders of title to the water rights appurtenant to the land and it appears that the majority of the acreage with water rights delivered by the irrigation district described in the petition is of an agricultural character, the board shall issue an order partitioning the irrigation district as set forth in the petition. The board shall not modify the boundaries set forth in the original petition. Provided however, the board may permit any holder of evidence of title to land lying within the boundaries of the original district of forty (40) acres or more in size used primarily for agricultural purposes to include such land in the new irrigation district, if such landowner has filed a separate petition with the board establishing that such land meets all the criteria required to have been joined in the original petition, including ownership of water rights appurtenant to the land. Supplemental petitions may be accepted at any time prior to the date of hearing.

**History.**

I.C., § 43-1321, as added by 2013, ch. 332, § 9, p. 867.

**Compiler's Notes.** Section 1 of S.L. 2013, ch. 332 provided: "Legislative intent. The purpose of this act is to authorize the owners of land within an irrigation district that delivers only natural flow water rights, whose land is served by the irrigation district and who own the water rights appurtenant to that land, to

partition the irrigation district into separate irrigation districts in order to preserve and protect the agricultural uses of the district lands, to provide for continuation of the irrigation of those lands and to set forth guidelines for ownership and operation of irrigation works between the newly partitioned irrigation districts."

Section 15 of S.L. 2013, ch. 332 declared an emergency. Approved April 11, 2013.

**43-1322. Divisions of district for election of directors.** — The board of county commissioners shall also enter an order dividing the new partitioned irrigation district into not less than three (3) nor more than seven (7) divisions of as nearly equal size as practical, which shall be



numbered first, second, third, etc. One (1) director, who shall be an elector and resident in the division, shall be elected from each division of the district. Provided however, that in districts of three thousand (3,000) acres or less, the directors may be elected from qualified electors holding title or evidence of title to land in the district and residing in the county where some portion of the district is located. The number of divisions into which the district shall be divided shall be specified in the petition for the partition of the new irrigation district, and if not otherwise specified, shall be three (3). The board shall also enter an order dividing the remaining irrigation district after partition into the same number of divisions of as nearly equal size as practical as existed in the original irrigation district prior to partition.

**History.**

I.C., § 43-1322, as added by 2013, ch. 332, § 10, p. 867.

**Compiler's Notes.** Section 1 of S.L. 2013, ch. 332 provided: "Legislative intent. The purpose of this act is to authorize the owners of land within an irrigation district that delivers only natural flow water rights, whose land is served by the irrigation district and who own the water rights appurtenant to that land, to

partition the irrigation district into separate irrigation districts in order to preserve and protect the agricultural uses of the district lands, to provide for continuation of the irrigation of those lands and to set forth guidelines for ownership and operation of irrigation works between the newly partitioned irrigation districts."

Section 15 of S.L. 2013, ch. 332 declared an emergency. Approved April 11, 2013.

**43-1323. Effective date of partition — Challenges to partition. —**

The effective date of the partition of the existing district into two (2) districts shall be as of the date of the order of the board of county commissioners. Following the effective date of the partition order by the board, the newly partitioned irrigation district shall immediately undertake to reorganize, elect officers as set forth in section 43-301, Idaho Code, and exercise all powers and duties of an irrigation district. Any appeal from, or judicial challenge to, the order of the board partitioning the irrigation district must be brought in the county where the board sits within ninety (90) days from the effective date of the order or be forever barred.

**History.**

I.C., § 43-1323, as added by 2013, ch. 332, § 11, p. 867.

**Compiler's Notes.** Section 1 of S.L. 2013, ch. 332 provided: "Legislative intent. The purpose of this act is to authorize the owners of land within an irrigation district that delivers only natural flow water rights, whose land is served by the irrigation district and who own the water rights appurtenant to that land, to

partition the irrigation district into separate irrigation districts in order to preserve and protect the agricultural uses of the district lands, to provide for continuation of the irrigation of those lands and to set forth guidelines for ownership and operation of irrigation works between the newly partitioned irrigation districts."

Section 15 of S.L. 2013, ch. 332 declared an emergency. Approved April 11, 2013.

**43-1324. Joint works — Jointly held property. —** The irrigation works and any other real or personal property held by the original irrigation district prior to the partition shall belong to the partitioned irrigation districts jointly as provided in this section. All canals and laterals that deliver water to members of both districts shall be held by each district in proportion to the total quantity of water delivered to members of each district through each individual diversion work, canal and lateral. All other real and personal property shall be held jointly by the two (2) districts in



proportion to the total quantity of water rights held by the members of each district that are appurtenant to lands within the newly partitioned district. Any outstanding debts of the district prior to partition shall be joint obligations of the two (2) newly partitioned districts after the partition in proportion to the total quantity of water rights held by members of each district within the newly partitioned districts. All assessments collected from landowners shall be provided to the new districts based upon the location of the land after the partition, less the proportionate share of expenses incurred prior to the effective date of the order of partition.

**History.**  
I.C., § 43-1324, as added by 2013, ch. 332, § 12, p. 867.  
**Compiler's Notes.** Section 1 of S.L. 2013, ch. 332 provided: "Legislative intent. The purpose of this act is to authorize the owners of land within an irrigation district that delivers only natural flow water rights, whose land is served by the irrigation district and who own the water rights appurtenant to that land, to

partition the irrigation district into separate irrigation districts in order to preserve and protect the agricultural uses of the district lands, to provide for continuation of the irrigation of those lands and to set forth guidelines for ownership and operation of irrigation works between the newly partitioned irrigation districts."  
Section 15 of S.L. 2013, ch. 332 declared an emergency. Approved April 11, 2013.

**43-1325. Joint operation.** — Whenever the partitioned irrigation districts share irrigation works, canals and laterals after the partition takes effect, a joint board of control, not exceeding seven (7) members, shall be chosen by the board of directors of the respective partitioned irrigation districts, the members of which shall be apportioned to each district as nearly as practicable in accordance with the acreage for which water shall be provided in each respective district. Said board of control shall control, manage and operate such joint works subject to the board of directors of the respective districts and each member of the board of control shall hold office at the will of the board of directors of the district appointing such member.

**History.**  
I.C., § 43-1325, as added by 2013, ch. 332, § 13, p. 867.  
**Compiler's Notes.** Section 1 of S.L. 2013, ch. 332 provided: "Legislative intent. The purpose of this act is to authorize the owners of land within an irrigation district that delivers only natural flow water rights, whose land is served by the irrigation district and who own the water rights appurtenant to that land, to partition the irrigation district into separate irrigation districts in order to preserve and protect the agricultural uses of the district lands, to provide for continuation of the irri-

gation of those lands and to set forth guidelines for ownership and operation of irrigation works between the newly partitioned irrigation districts."  
Section 14 of S.L. 2013, ch. 332 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."  
Section 15 of S.L. 2013, ch. 332 declared an emergency. Approved April 11, 2013.

CHAPTER 15

MISCELLANEOUS PROVISIONS OF DISTRICT LAW

SECTION.  
43-1510. Tax exemptions.

**43-1503. Other laws unaffected.**

**Cited in:** *Nelson v. Big Lost River Irrigation Dist.*, 148 Idaho 157, 219 P.3d 804 (2009).

**43-1510. Tax exemptions.** — The following irrigation district property and the revenue therefrom shall be exempt from taxation: (1) water rights for the irrigation of lands; (2) irrigation structures described in section 63-602N(2), Idaho Code; (3) all operating property described in section 63-602N(3), Idaho Code; and (4) all parks and recreational facilities owned or maintained by an irrigation district pursuant to this title. Such property tax exemption shall not be subject to approval by the county board of equalization. Bonds and interim notes, and interest thereon, issued pursuant to the authority contained in this title shall be exempt from taxation under the Idaho income tax law.

**History.**

I.C., § 43-1510, as added by 2007, ch. 136,  
§ 1, p. 396.

## CHAPTER 18

## COOPERATION WITH FEDERAL GOVERNMENT

## SECTION.

43-1808. Election to determine whether dis-

trict shall contract with gov-  
ernment.

**43-1808. Election to determine whether district shall contract with government.** — (a) At any election under the provisions of section 43-401, Idaho Code, when the question of a contract between the district and the United States is to be voted upon, the notice of such election may state generally the terms of such contract and the ballots may contain the words "Contract—yes" or "Contract—no," or other words equivalent thereto, instead of the words "Bonds—yes" or "Bonds—no," and the procedure in connection with such vote upon such contract.

(b) Any election where the question of a contract between an irrigation district and the United States providing for the payment by the United States of the irrigation district's proportionate share of the capital costs of reconstructing, rehabilitating, replacing or improving dams, structures or works, whether or not legal title thereto is owned by the district, necessary to the storage, diversion or delivery of water necessary and appurtenant to the purposes for which such district was organized is to be voted upon, shall be conducted in accordance with the provisions of section 43-401, Idaho Code, insofar as possible. The question shall be submitted to a vote of all qualified electors of the district as defined in section 43-111, Idaho Code, except that any person residing within the boundaries of the irrigation district and meeting the qualifications of section 34-104, Idaho Code, shall also be permitted to vote. No report need be obtained from the department of water resources and the notice of election need not contain any recital concerning a report from the department of water resources. The contract between an irrigation district and the United States providing for the

payment by the United States of the irrigation district's proportionate share of the capital costs of reconstructing, rehabilitating, replacing or improving dams, structures or works, the election approving the contract and all proceedings taken by an irrigation district in connection with the contract and election need not be confirmed by the district court.

**History.**

1903, p. 150, part of § 15; reen. 1907, p. 484, § 1, part of subd. 15; reen. R.C., § 2396; am. 1915, ch. 143, proviso in § 5, p. 304; compiled and reen. C.L., 167:8; C.S., § 4473; I.C.A., § 42-1808; am. 1980, ch. 329, § 1, p. 851; am. 2006, ch. 124, § 3, p. 357.

**Compiler's Notes.** The 2006 amendment, by ch. 124, deleted "and the confirmation thereof by the court shall otherwise be the same as provided in connection with a bond issue" from the end of subsection (a).

**43-1829. Reservoirs constructed by government — Power of district to acquire and dispose of rights therein.**

**Beneficial Use.**

Where the United States bureau of reclamation (BOR) filed water right claims against irrigation entities regarding projects developed pursuant to the Reclamation Act of 1902, any rights held by BOR were subject to rights of the beneficial users that were served by the irrigation districts because, inter alia, (1) federal law deferred to state law in determining the rights to water in the reclamation projects, (2) the beneficial users had an interest

that was stronger than mere contractual expectancy, and (3) title to the use of the water was held by the consumers or users of the water. *United States v. Pioneer Irrigation Dist.* (In re SRBA Case No. 3957), 144 Idaho 106, 157 P.3d 600 (2007).

Entity that applies the water to beneficial use has a right that is more than a contractual right. *United States v. Pioneer Irrigation Dist.* (In re SRBA Case No. 3957), 144 Idaho 106, 157 P.3d 600 (2007).

CHAPTER 19

DOMESTIC WATER SYSTEMS — CONTRACTS WITH UNITED STATES

**43-1907. Grant of authority.**

**Applicability.**

Spending revenues from connection fees for certain purposes would be consistent with the Irrigation District Domestic Water System Revenue Bond Act (Act), §§ 43-1907 to 43-1920, and it would not be consistent with the act to use connection fees from the domestic

water system as a source of revenue for other district functions, such as the irrigation water system. *Viking Constr., Inc. v. Hayden Lake Irrigation Dist.*, 149 Idaho 187, 233 P.3d 118 (2010), overruled on other grounds, *Verska v. St. Alphonsus Med. Ctr.*, 151 Idaho 889, 265 P.3d 502 (2011).

**43-1909. Powers.**

ANALYSIS

Applicability.  
Assessment.  
Constitutionality.

**Applicability.**

District court did not err in holding that subsection (e) of this section applied to the irrigation district, even though it had not issued revenue bonds; the statute listed powers that any district may exercise. *Viking Constr., Inc. v. Hayden Lake Irrigation Dist.*, 149 Idaho 187, 233 P.3d 118 (2010), overruled

on other grounds, *Verska v. St. Alphonsus Med. Ctr.*, 151 Idaho 889, 265 P.3d 502 (2011).

Spending revenues from connection fees for certain purposes would be consistent with the Irrigation District Domestic Water System Revenue Bond Act (Act), §§ 43-1907 to 43-1920, and it would not be consistent with the act to use connection fees from the domestic water system as a source of revenue for other district functions, such as the irrigation water system. *Viking Constr., Inc. v. Hayden Lake Irrigation Dist.*, 149 Idaho 187, 233 P.3d 118 (2010), overruled on other grounds, *Verska v.*



St. Alphonsus Med. Ctr., 151 Idaho 889, 265 P.3d 502 (2011).

**Assessment.**

Connection fee imposed under subsection (e) of this section was not an assessment under § 43-704. *Viking Constr., Inc. v. Hayden Lake Irrigation Dist.*, 149 Idaho 187, 233 P.3d 118 (2010), overruled on other grounds, *Verska v. St. Alphonsus Med. Ctr.*, 151 Idaho 889, 265 P.3d 502 (2011).

**43-1912. Use of works — Revenue.**

**Reserve.**

The intent of the last sentence in this section is to prevent irrigation districts from transferring to their general funds revenues from works financed with bonds until full and adequate provision had been made for the five listed purposes, including providing the re-

**Constitutionality.**

Idaho Const., art. VIII, § 3 is not a grant of power; it is a limitation on the power of subdivisions of the state to incur indebtedness. *Viking Constr., Inc. v. Hayden Lake Irrigation Dist.*, 149 Idaho 187, 233 P.3d 118 (2010), overruled on other grounds, *Verska v. St. Alphonsus Med. Ctr.*, 151 Idaho 889, 265 P.3d 502 (2011).

serve for improvements to those works. *Viking Constr., Inc. v. Hayden Lake Irrigation Dist.*, 149 Idaho 187, 233 P.3d 118 (2010), overruled on other grounds, *Verska v. St. Alphonsus Med. Ctr.*, 151 Idaho 889, 265 P.3d 502 (2011).

CHAPTER 25

LOCAL IMPROVEMENT DISTRICTS

SECTION.

- 43-2504. Initiation of organization of local improvement district.
- 43-2506. Notice of intention and hearing.
- 43-2507. Protests and hearings.
- 43-2508. Resolution creating local improve-

SECTION.

- ment district and procedure for construction bids.
- 43-2511. Notice of hearing on assessment roll.

**43-2504. Initiation of organization of local improvement district.**

— The organization of any local improvement district herein provided for may be initiated upon a petition signed by not less than sixty percent (60%) of the owners of property subject to assessment within such local improvement district, or by resolution of the board adopted by an affirmative vote of a majority of the members of the full board at a regular or special meeting thereof. The terms of a petition shall include a description of the boundaries of a proposed local improvement district, the improvements to be made and the property to be assessed.

The board may, in its discretion, authorize a preliminary study to determine the feasibility and costs and expenses of a proposed local improvement district and pay for such study out of the general fund of the district. In the event the local improvement district is formed, the cost of the study may be included in the cost of the local improvement district and added to the assessment roll. In the event the local improvement district is not formed, for any reason, the board may authorize the cost of the study to be added to the general assessment rolls of the district as to the property within the proposed local improvement district.

In the alternative, the board may, in its discretion, as a condition of the board proceeding further with the formation of the local improvement district, require the petitioners to provide to the district a deposit in an amount determined in the board’s discretion to pay for a preliminary study

of the proposed local improvement district to determine the feasibility and costs and expenses of the project.

The petition shall include an acknowledgment by the petitioners that the district may require the petitioners to provide to the district a deposit in an amount determined in the board's discretion to pay for a preliminary study or that the board may, in its discretion, authorize the cost of the study to be paid out of the general fund of the district, with the cost of the study to be included in the cost of the local improvement district and added to the assessment roll if one is formed or to be added to the general assessment rolls of the district as to the property within the proposed local improvement district if the local improvement district is not formed.

**History.**

I.C., § 43-2504, as added by 1993, ch. 407,  
§ 1, p. 1475; am. 2008, ch. 301, § 1, p. 838.

**Compiler's Notes.** The 2008 amendment,

I.C., § 43-2504, as added by 1993, ch. 407, by ch. 301, added the last three paragraphs.

**43-2506. Notice of intention and hearing.** — The notice of intention shall be published in the official newspaper of the district. If the district is located in more than one (1) county, the notice of intention may be published only in the county where the property to be assessed in the proposed local improvement district is located. Publication shall be in three (3) consecutive issues if a daily newspaper, or in two (2) issues if a weekly newspaper or in case no newspaper is published in such district then by posting for five (5) days in three (3) public places within the proposed local improvement district. A copy of such notice shall be mailed to each owner of property, if known, or his agent, if known, within the limits of the proposed local improvement district, addressed to such person at his post office address if known, or if unknown, to a post office in the district where the improvement is to be made. Ownership of property shall be determined as of the date of the adoption of the resolution of intent to create. The hearing shall take place not less than ten (10) days from the date of the first of said publications or postings or the date of said mailing, whichever is later.

**History.**

I.C., § 43-2506, as added by 1993, ch. 407,  
§ 1, p. 1475; am. 2008, ch. 301, § 2, p. 839.

**Compiler's Notes.** The 2008 amendment,

I.C., § 43-2506, as added by 1993, ch. 407, by ch. 301, added the second sentence.

**43-2507. Protests and hearings.** — Any owner of property to be assessed in the proposed local improvement district described in the notice of intention shall have the right, in advance of the hearing, to file, in writing, a protest to the creation of the district or making any other objections in relation thereto. At the date, time and place specified in the notice of intention the board shall, in open and public session, consider all protests which have been filed in writing in advance of the hearing, and the hearing may be adjourned one (1) or more times at the discretion of the board to a fixed future time and place for the same, by publicly announcing at the hearing the continued date and time for such hearing, until all such protests have been heard. No further or additional notice of any kind shall be required. At any continued hearing, the board shall not consider any protests that were filed after the original hearing date. The decision of the

board as to all protests shall be conclusive and final, and if it should so determine, the board may delete any improvements on any property which had originally been contemplated in the said notice. If owners of more than two-thirds (2/3) of the property to be assessed protest any of the proposed improvements which affect their property, the board shall not proceed further with the work so protested unless a majority of the members of the full board shall vote to proceed with such work. The vote on the hereinafter mentioned resolution creating the local improvement district shall constitute the vote as to whether or not the board will proceed. Any property owner who fails to file a protest within the time specified, or having filed one withdraws said protest, shall be deemed to have waived any objection to the creation of the local improvement district, the making of the improvements, and the inclusion of his property in the local improvement district. Such waiver shall not preclude his right to object to the amount of the assessment at the later hearing provided for such purpose.

In cases where written protests are filed and sixty percent (60%) of the owners or the owners of two-thirds (2/3) of the lots and lands within such proposed local improvement district have signed such protest, the board shall not be allowed to proceed with the creation of the local improvement district for a period of one hundred eighty (180) days.

After expiration of the one hundred eighty (180) day period, the district may recommence the initiation of a local improvement district as originally proposed or as modified as provided in this chapter.

#### **History.**

I.C., § 43-2507, as added by 1993, ch. 407, § 1, p. 1475; am. 2008, ch. 301, § 3, p. 839.

**Compiler's Notes.** The 2008 amendment, by ch. 301, in the first paragraph, in the second sentence, substituted "may be adjourned one (1) or more times at the discretion

of the board" for "may be adjourned from time to time," and inserted "by publicly announcing at the hearing the continued date and time for such hearing," and added the third and fourth sentences; and rewrote the last paragraph to the extent that a detailed comparison is impracticable.

**43-2508. Resolution creating local improvement district and procedure for construction bids.** — If, after the hearing on the creation of the district, the board finds that the local improvement district will be for the best interest of the property affected and the district; that there is reasonable probability that the obligations of such local improvement district will be paid; and the value of the property within the proposed local improvement district is sufficient; it shall then adopt a resolution providing for such improvements and creating a local improvement district to be called "Local Improvement District No. ... for ..... Irrigation District, Idaho," which shall include all of the property within said local improvement district in accordance with the findings of the board, and said resolution shall set forth the boundaries of the local improvement district, provide the improvements which shall be made, and state that the total cost and expenses thereof shall be assessed according to the percentage or calculation hereinbefore mentioned on all benefited property in the local improvement district by using the gross acreage method of assessment contemplated in the notice of intention subject to any variation therefrom as a result of the board's determining that the benefits to be derived by certain lots or parcels



of property warrant such variations. The board shall appoint an engineer and shall have prepared the necessary plans and specifications for the construction work ordered. Except as hereinafter otherwise provided, the board shall authorize the advertisement for bids therefor by giving notice calling for sealed bids for the construction of the work in accordance with the provisions of chapter 28, title 67, Idaho Code.

Any contract made by a district for any improvements authorized by this code shall be made by the board in the name of the district upon such terms of payment as shall be fixed by the board. The contract shall be authorized by resolution empowering the authorized officer of the district to execute the contract. The resolution need not set out the contract in full but it shall be sufficient if the resolution refers to a copy of the contract on file in the office of the secretary where it is available for public inspection.

Any provision in this local improvement district for irrigation districts code notwithstanding, if any district shall elect to exercise the powers herein granted jointly with another irrigation district or districts, or with any other public agency or agencies as authorized by the provisions of section 67-2328, Idaho Code, the improvements as contemplated within the local improvement district may be constructed jointly and as part of a larger project with such other agency or agencies upon the letting of a single contract after compliance with the required bidding procedure for any Idaho public agency jointly participating in the work.

**History.**

I.C., § 43-2508, as added by 1993, ch. 407, § 1, p. 1475; am. 2005, ch. 213, § 16, p. 637.

**Compiler's Notes.** Section 15 of S.L. 2005,

ch. 213 is compiled as § 43-903 and Section 17 contained a repeal.

**43-2511. Notice of hearing on assessment roll.** — After the board fixes the time and place for said hearing on the assessment roll, the secretary of the district shall give notice by publication in the official newspaper of such district. If the district is located in more than one (1) county, the notice may be published only in the county where the property to be assessed is located. Publication shall be in three (3) successive issues if published in a daily newspaper, or by publication in two (2) issues if published in a weekly newspaper, the first of which publication shall be at least fifteen (15) days before the date fixed for hearing objections to said assessment roll, that such assessment roll is on file in his office. The notice shall further state the date, time and place at which the board will hear and consider objections to the assessment roll by the parties aggrieved by such assessments. The secretary shall, not less than fifteen (15) days before the date fixed for hearing objections to said assessment roll, mail a substantially similar notice to each owner of property if known, or his agent if known, within the limits of the local improvement district, addressed to such person at his post office address if known, or if unknown, to the post office in such district where the improvement is to be made. The mailed notice shall also state the amount of the individual assessment and that at the specified time and place the board will hold a hearing to hear and determine all objections to the regularity of the proceedings in making such assessment, the correctness of the assessment, and the amount levied on the particular lot or

parcel in relation to the benefits accruing thereon and in relation to the proper proportionate share of the total cost of the improvements in the project. It shall further state that each owner of property within the district is given notice that in revising the assessment roll at or after the hearing, the board may increase any assessment or assessments up to twenty percent (20%) of the original amount thereof without giving further notice and holding a new hearing thereon. The owner or owners of any property which is assessed in such assessment roll, whether named or not in such roll, may, before the date and time fixed for the hearing, file with the secretary his objections in writing to said assessment.

**History.**

I.C., § 43-2511, as added by 1993, ch. 407,  
§ 1, p. 1475; am. 2008, ch. 301, § 4, p. 841.

**Compiler's Notes.** The 2008 amendment,

by ch. 301, added the second sentence.







